Presidential Documents

Memorandum of March 20, 1992

Delegation of Responsibilities Under Public Law 102–229

Memorandum for the Secretary of State, the Secretary of Defense [and] the Director of the Office of Management and Budget

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate:

1. to the Secretary of State the authority and duty vested in the President under section 211(b) of H.R. 3807 as passed the Senate on November 25, 1991, and referred to in section 108 of the Dire Emergency Supplemental Appropriations and Transfers for Relief From the Effects of Natural Disasters, for Other Urgent Needs, and for Incremental Cost of 'Operation Desert Shield/Desert Storm' Act of 1992 (Public Law 102–229) (the Act); and

2. to the Secretary of Defense the authorities and duties vested in the President under sections 212, 221, 231, and 232 of H.R. 3807 as passed the Senate on November 25, 1991, and referred to in section 108 of the Act.

The Secretary of Defense shall not exercise authority delegated by paragraph 2 hereof with respect to any former Soviet republic unless the Secretary of State has exercised the authority and performed the duty delegated by paragraph 1 hereof with respect to that former Soviet republic. The Secretary of Defense shall not obligate funds in the exercise of authority delegated by paragraph 2 hereof unless the Director of the Office of Management and Budget has made the determination required by section 221(e) of H.R. 3807 as passed the Senate on November 25, 1991, and referred to in section 108 of the Act.

The Secretary of State is directed to publish this memorandum in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, March 20, 1992.

[FR Doc. 92–7989
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1901, 1940, 1951

[Regulation Identifier Number: 0575-ABOO]

System for Delivery of Certain Rural Development Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) adds a new regulation, subpart T, "System for Delivery of Certain Rural Development Programs," to part 1940—General. This action is taken by FmHA to comply with legislation authorizing a 5-year pilot program whereby a State rural economic development review panel will be established in up to five States for a particular period of time to review and rank applications requesting assistance from designated rural development programs. It also authorizes the use of grant funds, from grants appropriated under provision of section 306(a) of the Consolidated Farm and Rural Development Act, for administrative costs associated with the review panel operations, and to allow loan level transfers within a State among certain rural development programs. The intended effect of this action is to permit up to five States to establish a rural economic development review panel to review and rank certain rural development program applications in order to help assure that the social and economic needs of rural areas are funded according to acceptable development plans for rural areas within a State.

EFFECTIVE DATE: May 6, 1992.

FOR FURTHER INFORMATION CONTACT: Mildred W. McGlothin, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, 14th and Independence Avenue, SW., room 6330, Washington, DC 20250, Telephone (202) 720-9589.

SUPPLEMENTARY INFORMATION:

Classification: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be "non-major." The action is not likely to result in any of the following: (a) An annual effect on the economy of $100 million or more, (b) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial.

Intergovernmental Review: The grant program will be listed in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact: This action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Programs." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act: The undersigned has determined that this action will not have a significant economic impact on small entities. Eligibility is extended only to States and in terms of total number of entities, less than 25 will be affected annually.

Background

Under current FmHA procedures for funding or guaranteeing Community and Business Program projects, the Agency reviews and ranks applications, assigning particular weight to important factors such as the type of applicant, population and income. FmHA also considers availability of funds within each program. Pursuant to the provisions of title XXIII of the Food, Agriculture, Conservation and Trade Act of 1990, Public Law 101-624 (FACT Act), this action establishes a 5-year pilot program that will modify the method by which applications are selected for funding. The pilot program ends September 30, 1996. In particular, this proposal adds a new regulation to select up to five States for a particular period of time to operate a modified application review and ranking procedure. Once designated for participation in this pilot program, this procedure will become the State's exclusive method by which allocated funds are disbursed to eligible applicants. Selected States cannot "opt out" of the procedure during the established period of time for which they were designated and revert to the old ranking and applicant selection process. Governors will establish a State rural economic development review panel consisting of up to 16 voting and up to four nonvoting members to review and rank applications requesting funds from designated rural development programs. Projects selected for funding under the panel review process will be selected considering area and regional development plans of the State. FmHA will fund projects based upon the panel's ranked list as funds are available. The regulation also authorizes loan level transfers within a designated State among certain loan programs, and authorizes grant funds to pay administrative costs associated with panel operation.

Even though the FACT Act authorized loan level transfers and an appropriation of funds for the panels, Federal funds have not been appropriated or otherwise made available by Congress for fiscal year (FY) 1992. Therefore, it will be necessary for designated States to fund all panel expenses. Also, the Appropriations Act for fiscal year 1992, Public Law 102-142, prohibits loan level transfers. Thus, sections 1940.962 and 1940.963 of this subpart are not applicable at this time.

Comments on the Proposed Rule

FmHA published a proposed rule to implement these changes at 56 FR 46576 (September 13, 1991).

The Agency received 24 responses on the proposed rule from States, interest groups, nonprofit organizations, national associations, utility companies and associations, universities, and various organizations associated with rural development. The responses contained over 80 comments. All comments were considered when preparing this final rule; however, all comments have not been addressed separately since many comments could be addressed collectively. Responses to comments received are grouped according to subject matter.

General Comments

Four commenters endorsed the 5-year pilot program and complimented FmHA for implementation. The Agency was also complimented on its interpretation of the law.

Three commenters objected to changing the present project selection criteria. The commenters felt that FmHA's present method has proven adequate to meet State's needs.

Commenters stated that the method works well to ensure appropriateness of funding priorities, strategies and allocation of funds to rural communities. The Agency feels that this pilot program will provide an opportunity to evaluate the effectiveness of its present project selection criteria and is proceeding with the rule.

Supplemental Information

Two comments were received on the supplemental information included with the proposed rule. One comment suggested that the proposal is controversial and is part of ongoing controversy in the congressional appropriations process. No change was made. FmHA's interpretation of the law's intent is to establish a pilot program to determine if Federal funds for rural development programs can be directed where they are most needed, in individual States, by a process other than Federal selection. A comment also questioned the Environmental Impact section of the proposal arguing that a shift of program funds according to section 1940.963 could negatively impact areas with water and waste problems if economic development activities were ranked higher. FmHA expects the panel to be prudent in selection of projects to fund. Since economic development is dependent upon an adequate source of water and method of waste disposal, the panel will most assuredly suggest that communities experiencing problems with water and waste disposal facilities receive funds to correct the situations. Also, States are aware that they must comply with the requirements of the Safe Drinking Water Act and Clean Water Act. As a result, it is still the Agency's opinion that no Environmental Impact Assessment is unnecesary, since the rule change does not significantly effect the quality of the human environment.

"Opt Out" Provision

Six commenters opposed the requirement that "designated States cannot" "opt out" of the procedure and revert to the old ranking and applicant selection process. Commenters felt that this requirement was not the intent of the statutory language in title XXIII of the FACT Act and that the provision should be dropped or revised to provide States an escape clause that allows States to revert to the old process. In considering this important matter, the Agency has determined that the language in the proposed rule regarding the "opt out" provision is an accurate reflection of the Statute. However, the final rule includes changes that establish shorter periods of time in which a State is required to stay in the program. Thus, the Agency will implement the pilot program through a series of 1-year periods, to run consecutively until September 30, 1996. If a State does not wish to continue in the pilot, it can revert back to the old allocation procedure, according to the provisions at section 1940.954(a). Changes have also been made to allow a designated State to remain in the pilot program for another time period (provided all eligibility requirements continue to be met) without submitting another application. Once a designated State meets eligibility requirements, the State is expected to participate in the pilot program during the newly established shorter time periods.

Transfer of Funds

One commenter requested that the provision to transfer funds among designated loan programs be allowed in all States among all programs; another commenter noted correctly that the transfer of funds is prohibited in the Agency's FY 1992 Appropriation Act and feels the provision should be removed from the regulation. Even though appropriated funds for 1992 may not be transferred, the Agency is leaving this provision in the final rule. The intent of this provision in the pilot program is to test the impact upon rural development needs when appropriated funds could be transferred. It is possible that future-year appropriations will not restrict loan level transfers. Therefore, while the final rule does have this language, it is rendered ineffective for FY 1992.

One commenter questioned why the National Office must concur with each transfer of direct loan funds as recommended by the State Director. The commenter expressed belief that it would be more appropriate for the State Director to receive concurrence from the panel. No change was made to the final rule. The National Office must concur in all loan level transfers in order to maintain control over fund balances in the appropriation accounting system.

Minority Banks

One commenter suggested that § 1940.968(k)(3), which encourages States in the pilot program to utilize banks owned by at least 50 percent minority group members for deposit and disbursement of funds, be revised to encourage the use of minority banks only when rates and terms of deposit accounts are competitive with other commercial banks. The final rule was not changed since this provision is a suggestion only; the selection of a bank will be the responsibility of the designated State.

Pool and Reserve

Several commenters objected to a separate pooling for designated States and disagreed with the requirement that prohibits designated States from participating in the National Office reserve, which includes funds pooled from among nondesignated States. Commenters stated that this requirement could prove to be a major disincentive for State participation in the pilot program. It was requested that this requirement be removed from the rule. Section 2316(a) of the FACT Act established a separate pooling for States participating in this pilot program. Present designated rural development program regulations require two pooling dates for major programs; midyear, which normally occurs in April, and yearend which occurs in August. The final rule did not change the separate pooling for designated States; however, the final rule has been modified to allow designated States access to funds pooled from nondesignated States, under limited conditions.

Designated States

Seven comments were received regarding the process used to select the five designated States.

One commenter recommended that only States with a small program be

designated so as to minimize adverse effects on the least number of people. The recommendation was considered but not incorporated in the final rule. Initially, the Statute does not provide for limiting the pilot only to those States with small programs. More importantly, since it is the Agency's view that Congress established the pilot program to determine whether it was a better method of distributing the loans and grants than the current method, the best way to make this determination is to consider a representative variety of States to participate in the pilot program. Therefore, any State that applies will be considered, and selection of designated States will be made based upon criteria within the regulations—not on the size of the State's program.

One commenter urged the Agency to replace ineligible States to ensure the 5-year pilot program is fully tested. The Agency felt this recommendation is not desirable. States designated for the first established time period may have until September 1, 1992, if needed to meet eligibility requirements. Four 1-year time periods will then remain to test the program. Designated States are expected to remain eligible and participate in the pilot program during the period for which they are designated. However, if a designated State does not wish to participate in the following year of the pilot program, § 1940.954(a) provides that another State may be selected as a replacement.

One commenter requested clarification on eligibility requirements for designated States based upon §§ 1940.954(a)(2)(iv) and 1940.959. Eligibility requirements are set forth in section 1940.954(e). Section 1940.954(a)(2)(iv) was written so that a State could apply to participate in this program based upon its proposal to meet eligibility requirements, if selected. If the State is not selected, time and resources have not been needlessly expended. There is no duplication or overlapping in the application process. In order to be found eligible, a State must either show it is already complying with the criteria (i.e. area plans are already in place State-wide), or show how it proposes to comply with the criteria (i.e. develop the standards to be used in formulating area plans). Thus, if a State submits evidence of complying with the eligibility requirements at the time the State applies, instead of proposing how it would meet eligibility requirements at a later time, this evidence need not be resubmitted, except for subsequent fiscal years.

One eligibility requirement requires the selected State to establish a review panel. Panel duties and responsibilities include the development of policy and criteria to review and evaluate area plans. Section 1940.959 sets forth the information that should be included in area plans submitted to the panel for review. Each State selected to participate will develop its own policy and criteria to use when evaluating area plans, based upon the technical information included in § 1940.959. How and when plans are developed is the State's responsibility, but no project can be ranked for funding by the panel unless a development plan has been established for the area in which the project is located.

Section 1940.954(d) of the proposed rule provided that the FmHA State Director would review the State's submission and recommend whether the State was eligible. One commenter was concerned that a State Director that opposed the program could include subjective evaluations in the recommendations to the FmHA Administrator. The commenter recommended that the final rule explicitly limit a State Director's recommendation to the matter of whether a State has met its eligibility requirements. The final rule was changed to remove reference to the State Director's participation in the selection and eligibility process; instead, the Under Secretary for Small Community and Rural Development will complete the review and selection process.

One commenter stated that § 1940.951 does not provide criteria for selecting designated States, and suggested that the final rule include these factors, such as commitment from the State of resources to administer the panel and provide technical assistance to rural communities seeking funds under this demonstration. The final rule does not include changes to § 1940.951. States will be selected based upon the information submitted in accordance with § 1940.954. Although the State need not specifically commit resources, as the comment suggests, the State does have to submit a budget, according to § 1940.954(a)(3), that includes projections of income and expenses associated with the panel's operation. Since Congress did not appropriate or otherwise make funds available for the panels this fiscal year, the designated States' budgets must absorb all expenses from their own resources.

Three commenters strongly opposed the FmHA Administrator receiving applications and determining which States will be selected, and recommended that the Under Secretary for Small Community and Rural Development manage this process. The final rule has been changed to remove reference to the FmHA Administrator and State Director. The Under Secretary for Small Community and Rural Development will select States and determine eligibility.

Panel/Panel Members

The Statute provides that applications for rural development programs be reviewed and ranked by a "State Rural Economic Development Review Panel." The panels will have up to 16 voting and four non-voting members who will be selected based on a variety of criteria. Many comments were received regarding the panel. Recommendations were made to include members from various other organizations. Commenters also recommended that each State be allowed to assemble its own panel according to needs and resources and without Federal oversight. The Agency is aware that there are numerous other organizations with expertise in rural development; however, the final rule includes only those members representing organizations as specified in Section 2316 of the FACT Act. Each State will select panel members from among the specified organizations to provide uniformity among the designated States.

One commenter suggested that the panel meet monthly. The final rule was changed to add that the panels should meet as frequently as is necessary to ensure that applications are reviewed and ranked in a timely manner, but not less frequently than quarterly.

One commenter requested clarification of § 1940.956(c) regarding the number of panel members required. Language in the proposed rule followed that in the Statute which states that the panel may include up to 16 voting members, but failure to appoint a full 16-member panel shall not prevent a State from being determined eligible. No change was made in the final rule.

One commenter suggested that FmHA set a time limit for filling panel vacancies. The final rule was revised to require the vacancy to be filled prior to the third panel meeting held after the vacancy occurred. The State coordinator will notify the State Director, in writing, if the vacancy will not be filled.

Regarding § 1940.956(c)(5)(ii), one commenter questioned whether the Governor would select between two statewide healthcare associations or two statewide banking associations. This section of the final rule has been reworded for clarity.

Area Development Plans

The following comments relating to area development plans have not been added to the final rule. An indication of why the Agency did not include the comments in the final rule is included.

Several comments expressed concern about the costs associated with developing plans for all areas. It was suggested that States be required to provide technical and financial assistance; that the costs for preparing area development plans be considered an eligible cost for use of panel grant funds; that plans be developed on an as-needed basis, and the question was asked as to whether or not plans must be approved by FmHA. Panel grans are only authorized to pay administrative costs associated with panel duties and responsibilities. Since preparing area development plans is not a responsibility of the panels, grant funds cannot be used to pay for the plan preparation. The panel is responsible for reviewing and ranking applications that are consistent with the State's area and regional development plans. Before a project can expect to receive funds from a designated rural development program, an acceptable plan that includes the area in which the project is located must be in place. States may need to provide technical and financial resources to assure that plans are developed, as needed, for areas where projects are expected to be financed in whole or in part with designated rural development program funds. While it is the panel's responsibility to review, evaluate, and accept plans based upon established criteria, it is not the panel's responsibility to develop the plans themselves, or to fund the development of the plans.

Some comments expressed concern that the items to be addressed when preparing area development plans, at § 1940.959, should be considered as guidelines rather than as a specific recipe. The items that are included must, according to the Statutes, be addressed in the plans; nevertheless, the plans may go beyond the list and address other issues.

Several commenters suggested various groups that should be involved in formation of the plans; to give weight to plans developed by certain groups; that weights be consistent among the five designated States, and that the rule provide guidance regarding the composition of local intergovernmental development councils. The Agency recognizes that additional weights and input from various groups could be incorporated; thus, added issues can be addressed in area development plans, and the panel can consider these issues in its reviews and evaluation of the plans.

The following comments relating to area development plans have been added to the final rule.

One comment requested a clarification on the issue of applying budget and fiscal control processes to the plan. This criteria is intended to assure that the plan addresses how costs associated with carrying out planned development will be covered. The Agency recognizes that budgeting is the primary means of financial management and control for all governments. Additional language has been added to the final rule for clarification.

Several comments were directed toward the use and acceptability of existing plans. The final rule has been changed to state that existing area plans are acceptable, under certain conditions.

Application Review and Ranking

Several comments were received regarding submission of applications to the panel. Recommendations suggested that applications be submitted directly to the panel; that applications be ranked on the merits of the proposed project and not on whether it is included in an area plan; that when an applicant is notified that a panel review is underway, a timeframe should be given within which they would be notified of the results of the review. The final rule does not include these recommended changes. Applications are submitted to FmHA prior to review by the panel in order to determine eligibility. If an applicant is not eligible for FmHA assistance, panel review is not necessary. Only eligible applicants will be reviewed and ranked by the panel. The Statute requires that an acceptable area development plan be in place that covers the area in which the project is located, before an application can be ranked. A timeframe to notify applicants of the results of the panel review was not added to the final rule since the Agency cannot determine the time needed by the panel to review and rank applications.

One commenter requested that availability of the panel's list of ranked applications to the public be mandatory. The Agency believes the language in the proposed rule is sufficient. Although States are not required to publish the list, the list will be made available to all interested parties on request.

Several comments were made regarding final funding decisions and the documentation required when the State Director does not fund projects according to the panel's ranked list. Another comment requested that an appeal process be established to appeal the State Director's funding decision if it differs from the panel and when a panel violates its own policies. The State Director will make final funding decisions based upon the panel's ranked list and on availability of program funds. The State Director can deviate from the ranked list only in very limited circumstances. If funds are not sufficient to allow funding of the panel's highest ranked project(s), the project(s) next in line will be funded based on program funds that are available. An appeal process is available under current applicant notification procedures in each designated rural development program regulation. Program regulations are available in any FmHA State or District office.

Regarding the policy and criteria used by the panel to rank applications for business related projects, at § 1940.956(b)(1)(ii)(A), the commenter requested that the final rule state that the list is not in rank order. The final rule has been changed accordingly.

Designated Agency

One commenter requested that the purpose of some of the designated agency's responsibilities at § 1940.958, be clarified and, in particular, the purpose of identifying alternative funding sources. Although the State must designate an agency to assist the panel, the extent to which the panel uses the agency is at the discretion of each panel. The designated agency may identify alternative funding sources when FmHA funding is not sufficient to fund projects ranked by the panel. No changes were made in the final rule.

Efficient Operation

One commenter recommended that changes be made to include principles that would maximize the effectiveness of development efforts—such as, local stake-holding, interagency cooperation and maximum decision making at the local level. No changes were made regarding these comments. Any State that participates in this program must use its own resources to fund panel expenses, since no funds were appropriated or otherwise made available this fiscal year. The diversity of panel members provides interagency cooperation and assures local level decision making.

One commenter suggested that the Agency needs to focus on requiring all rural development programs and organizations to work together, to reduce overlap and duplication and to establish cooperative work agreements.

The commenter also had a concern for the need to establish another level of bureaucracy. No change was made to the final rule. This rule changes only the way in which applications are reviewed and selected for funding. The Agency has memorandums of understanding with several other Federal agencies that help to reduce overlap and duplication and promote a good working relationship among those agencies. Program regulations also provide for joint funding and for the adoption of environmental assessments completed by other Federal agencies.

List of Subjects

7 CFR Part 1901

Civil rights, Compliance reviews, Fair housing, Minority groups.

7 CFR Part 1940

Administrative practice and procedure, Agriculture, Grant program—Housing and Community Development, Loan programs—Agriculture, Rural areas.

7 CFR Part 1951

Account servicing, Grant programs—Housing and community development, Reporting requirements, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations, is amended as follows:

PART 1901—PROGRAM RELATED INSTRUCTIONS

1. The authority citation for part 1901 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 40 U.S.C. 442; 5 U.S.C. 301; 42 U.S.C. 2942; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Civil Rights Compliance Requirements *C*

2. Section 1901.204 is amended by adding paragraph (a)(23) to read as follows:

§ 1901.204 Compliance reviews.

(a) * * *

(23) System for Delivery of Certain Rural Development Programs Panel Grants.

* * * * *

PART 1940—GENERAL

3. The authority citation for part 1940 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

4. Section 1940.590 is amended by adding paragraph (g) to read as follows:

§ 1940.590 Community and Business Programs appropriations not allocated by State.

* * * * *

(g) *System for Delivery of Certain Rural Development Programs Panel Grants.* Control of funds will be retained in the National Office and made available to eligible States.

5. Subpart T of part 1940, consisting of §§ 1940.951 through 1940.1000, is added to read as follows:

Subpart T—System For Delivery of Certain Rural Development Programs

Sec.

1940.951 General.
1940.952 [Reserved]
1940.953 Definitions.
1940.954 State participation.
1940.955 Distribution of program funds to designated States.
1940.956 State rural economic development review panel.
1940.957 State coordinator.
1940.958 Designated agency.
1940.959 Area plan.
1940.960 Federal employee panel members.
1940.961 Allocation of appropriated funds.
1940.962 Authority to transfer direct loan amounts.
1940.963 Authority to transfer guaranteed loan amounts.
1940.964 [Reserved]
1940.965 Processing project preapplications/applications.
1940.966–1940.967 [Reserved]
1940.968 Rural Economic Development Review Panel Grant (Panel Grant).
1940.969 Forms, exhibits, and subparts.
1940.970 [Reserved]
1940.971 Delegation of authority.
1940.972–1940.999 [Reserved]
1940.1000 OMB control number.

Subpart T—System for Delivery of Certain Rural Development Programs

§ 1940.951 General.

This subpart sets forth Farmers Home Administration (FmHA) policies and procedures for the delivery of certain rural development programs under a rural economic development review panel established in eligible States authorized under sections 365, 366, 367, and 368 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), as amended.

(a) If a State desires to participate in this pilot program, the Governor of the State may submit an application to the Under Secretary for Small Community and Rural Development, U.S. Department of Agriculture, room 219–A, Administration Building, Washington, DC 20250 in accordance with § 1940.954 of this subpart.

(b) The Under Secretary shall designate not more than five States in which to make rural economic development review panels applicable during any established time period for the purpose of reviewing and ranking applications submitted for funding under certain rural development programs. The following time periods have been established for participation in this pilot program:

First period—Balance of fiscal year (FY) 1992 to September 30, 1993;
Second period—October 1, 1993 to September 30, 1994;
Third period—October 1, 1994 to September 30, 1995; and
Fourth period—October 1, 1995 to September 30, 1996.

The State will be bound by the provisions of this pilot program only during the established time period(s) for which the State is designated. If a designated State does not remain an eligible State during the established time period(s) for which the State was designated, the State will not be eligible to participate in this program and cannot revert to the old ranking and applicant selection process.

(c) Assistance under each designated rural development program shall be provided to eligible designated States for qualified projects in accordance with this subpart.

(d) Federal statutes provide for extending FmHA financially supported programs without regard to race, color, religion, sex, national origin, marital status, age, familial status, or physical/mental handicap (provided the participant possesses the capacity to enter into legal contracts.)

§ 1940.952 [Reserved]

§ 1940.953 Definitions.

For the purpose of this subpart:

Administrator. The Administrator of FmHA.

Area plan. The long-range development plan developed for a local or regional area in a State.

Designated agency. An agency selected by the Governor of the State to provide the panel and the State Coordinator with support for the daily operation of the panel.

Designated rural development program. A program carried out under sections 304(b), 306(a), or subsections (a) through (f) and (h) of section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)), as amended, or under section 1323 of the Food Security Act of 1985, for which

funds are available at any time during the FY under such section, including, but not limited to, the following:

(1) Water and Waste Disposal Insured or Guaranteed Loans;

(2) Development Grants for Community Domestic Water and Waste Disposal Systems;

(3) Technical Assistance and Training Grants;

(4) Emergency Community Water Assistance Grants;

(5) Community Facilities Insured and Guaranteed Loans;

(6) Business and Industry Guaranteed Loans;

(7) Industrial Development Grants;

(8) Intermediary Relending Program;

(9) Drought and Disaster Relief Guaranteed Loans;

(10) Disaster Assistance for Rural Business Enterprises;

(11) Nonprofit National Rural Development and Finance Corporations.

Designated State. A State selected by the Under Secretary, in accordance with § 1940.954 of this subpart, to participate in this program.

Eligible State. With respect to a FY, a State that has been determined eligible in accordance with § 1940.954 (e) of this subpart.

Nondesignated State. A State that has not been selected to participate in this pilot program.

Qualified project. Any project: (1) For which the designated agency has identified alternative Federal, State, local or private sources of assistance and has identified related activities in the State; and

(2) To which the Administrator is required to provide assistance.

State. Any of the fifty States.

State coordinator. The officer or employee of the State appointed by the Governor to carry out the activities described in § 1940.957 of this subpart.

State Director. The head of FmHA at the local level charged with administering designated rural development programs.

State rural economic development review panel or "panel". An advisory panel that meets the requirements of § 1940.956 of this subpart.

Under Secretary. In the U.S. Department of Agriculture, the Under Secretary for Small Community and Rural Development.

§ 1940.954 State participation.

(a) *Application.* If a State desires to participate in this pilot program, the Governor may submit an original and one copy of Standard Form (SF) 424.1, "Application for Federal Assistance (For Non-construction)," to the Under Secretary. The five States designated by the Under Secretary to participate in the first established time period will be selected from among applications received not later than 60 calendar days from the effective date of this subpart. If a designated State desires to participate in additional time periods, applications are not required to be resubmitted; however, the Governor must notify the Under Secretary, in writing, no later than July 31 of each FY, and the State must submit evidence of eligibility requirements each FY in accordance with § 1940.954 (e)(2) of this subpart. Beginning in FY 1993, applications must be submitted to the Under Secretary no later than July 31 if a State desires to be selected to fill vacancies that occur when designated States do not roll over into another established time period. States should include the following information with SF 424.1:

(1) A narrative signed by the Governor including reasons for State participation in this program and reasons why a project review and ranking process by a State panel will improve the economic and social conditions of rural areas in the State. The narrative will also include the time period(s) for which the State wishes to participate.

(2) A proposal outlining the method for meeting all the following eligibility requirements and the timeframes established for meeting each requirement:

(i) Establishing a rural economic development review panel in accordance with § 1940.956 of this subpart. When established, the name, title, and address of each proposed member should be included and the chairperson and vice chairperson should be identified.

(ii) Governor's proposed designation of a State agency to support the State coordinator and the panel. The name, address, and telephone number of the proposed agency's contact person should be included.

(iii) Governor's proposed selection of a State coordinator in accordance with § 1940.957 of this subpart, including the title, address, and telephone number.

(iv) Development of area development plans for all areas of the State that are eligible to receive assistance from designated rural development programs.

(v) The review and evaluation of area development plans by the panel in accordance with § 1940.956 of this subpart.

(vi) Development of written policy and criteria used by the panel to review and evaluate area plans in accordance with § 1940.956 of this subpart.

(vii) Development of written policy and criteria the panel will use to evaluate and rank applications in accordance with § 1940.956 of this subpart.

(3) Preparation of a proposed budget that includes 3 years projections of income and expenses associated with panel operations. If funds from other sources are anticipated, sources and amounts should be identified.

(4) Development of a financial management system that will provide for effective control and accountability of all funds and assets associated with the panel.

(5) A schedule to coordinate the submission, review, and ranking process of preapplications/applications in accordance with § 1940.956(a) of this subpart.

(6) Other information provided by the State in support of its application.

(b) *Selecting States.* The Under Secretary will review the application and other information submitted by the State and designate not more than five States to participate during any established time period.

(c) *Notification of selection.* (1) The Under Secretary will notify the Governor of each State whether or not the State has been selected for further consideration in this program. If a State has been selected, the notification will include the additional information that the Governor must submit to the Under Secretary in order for the State to meet eligibility requirements in accordance with paragraph (d) of this section.

(2) A copy of the notification to the Governor will be submitted to the Administrator along with a copy of the State's application and other material submitted in support of the application.

(d) *Determining State eligibility.* (1) The Governor will provide the Under Secretary with evidence that the State has complied with the eligibility requirements of paragraph (a)(2) of this section not later than September 1, 1992, for the first established time period and not later than September 1 for each of the remaining established time periods.

(2) The Under Secretary will review the material submitted by the Governor in sufficient detail to determine if a State has complied with all eligibility requirements of this subpart. The panel will not begin reviewing and ranking applications until the Governor has been notified in writing by the Under Secretary that the State has been determined eligible and is designated to participate in this program. A copy of the notification will be sent to the Administrator. The Under Secretary's decision is not appealable.

(e) *Eligibility requirements.* (1) With respect to this subpart, the Under

Secretary may determine a State to be an eligible State provided all of the following apply not later than October 1 of each FY:

(i) The State has established a rural economic development review panel that meets the requirements of § 1940.956 of this subpart;

(ii) The Governor has appointed an officer or employee of the State government to serve as State coordinator to carry out the responsibilities set forth in § 1940.957 of this subpart; and

(iii) The Governor has designated an agency of the State government to provide the panel and State coordinator with support for the daily operation of the panel.

(2) If a State is determined eligible initially and desires to participate in additional time periods established for this program, the Governor will submit documents and information not later than September 1 of each subsequent FY in sufficient detail for the Under Secretary to determine, prior to the beginning of the additional time period, that the State is still in compliance with all eligibility requirements of this subpart.

§ 1940.955 Distribution of program funds to designated States.

(a) States selected to participate in the first established time period will receive funds from designated rural development programs according to applicable program regulations until the end of FY 1992, if necessary for States to have sufficient time to meet the eligibility requirements of this subpart, and to be designated to participate in this program. No funds will be administered under this subpart to an ineligible State.

(b) If a State becomes an eligible State any time prior to the end of FY 1992, any funds remaining unobligated from a State's FY 1992 allocation, may be administered under this subpart.

(c) Beginning in FY 1993 and for each established time period thereafter, all designated rural development program funds received by a designated State will be administered in accordance with §§ 1940.961 through 1940.965 of this subpart, provided the State is determined eligible prior to the beginning of each FY in accordance with § 1940.954 of this subpart. No assistance will be provided under any designated rural development program in any designated State that is not an eligible State.

§ 1940.956 State rural economic development review panel.

(a) *General.* In order for a State to become or remain an eligible State, the State must have a rural economic development panel that meets all requirements of this subpart. Each designated State will establish a schedule whereby the panel and FmHA will coordinate the submission, review, and ranking process of preapplications/applications. The schedule will be submitted to the Under Secretary for concurrence and should consider the following:

(1) Timeframes should assure that applications selected for funding from the current FY's allocation of funds can be processed by FmHA and funds obligated prior to the July 15 pooling established in § 1940.961(c) of this subpart;

(2) Initial submission of preapplications/applications from FmHA to the panel and any subsequent submissions during the first year;

(3) How often during each FY thereafter should FmHA submit preapplications/applications to the panel for review and ranking;

(4) Number of working days needed by the panel to review and rank preapplications/applications;

(5) Number of times during the FY the panel will submit a list of ranked preapplications/applications to FmHA for funding consideration;

(6) Consider the matching of available loan and grant funds to assure that all allocated funds will be used;

(7) How to consider ranked preapplications/applications at the end of the FY that have not been funded; and

(8) How to consider requests for additional funds needed by an applicant to complete a project that already has funds approved; i.e., construction bid cost overrun.

(b) *Duties and responsibilities.* The panel is required to advise the State Director on the desirability of funding applications from funds available to the State from designated rural development programs. In relation to this advice, the panel will have the following duties and responsibilities:

(1) *Establish policy and criteria to review and evaluate area plans and to review and rank preapplications/applications.*

(i) *Area plan.* The panel will develop a written policy and criteria to use when evaluating area plans. The criteria to be used when evaluating area plans will assure that the plan includes, as a minimum, the technical information included in § 1940.959 of this subpart. The criteria will be in sufficient detail for the panel to determine that the plan is technically and economically adequate, feasible, and likely to succeed in meeting the stated goals of the plan. The panel will give weight to area-wide or regional plans and comments submitted by intergovernmental development councils or similar organizations made up of local elected officials charged with the responsibility for rural area or regional development. A copy of the policy and evaluating criteria will be provided to FmHA.

(ii) *Applications.* The panel will annually review the policy and criteria used by the panel to evaluate and rank preapplications/applications in accordance with this subpart. The panel will assure that the policy and criteria are consistent with current rural development needs, and that the public has an opportunity to provide input during the development of the initial policy and criteria. The Governor will provide a copy of the initial policy and criteria established by the panel when submitting evidence of eligibility in accordance with § 1940.954 of this subpart. Annually, thereafter, and not later than September 1 of each FY, the State coordinator will send the Under Secretary evidence that the panel has reviewed the established policy and criteria. The State coordinator will also send the Under Secretary a copy of all revisions.

(A) The policy and criteria used to rank applications for business related projects will include the following, which are not necessarily in rank order:

(*1*) The extent to which a project stimulate rural development by creating new jobs of a permanent nature or retaining existing jobs by enabling new small businesses to be started, or existing businesses to be expanded by local or regional area residents who own and operate the businesses.

(*2*) The extent to which a project will contribute to the enhancement and the diversification of the local or regional area economy.

(*3*) The extent to which a project will generate or retain jobs for local or regional area residents.

(*4*) The extent to which a project will be carried out by persons with sufficient management capabilities.

(*5*) The extent to which a project is likely to become successful.

(*6*) The extent to which a project will assist a local or regional area overcome severe economic distress.

(*7*) The distribution of assistance to projects in as many areas as possible in the State with sensitivity to geographic distribution.

(8) The technical aspects of the project.

(9) The market potential and marketing arrangement for the projects.

(10) The potential of such project to promote the growth of a rural community by improving the ability of the community to increase the number of persons residing in the community and by improving the quality of life for these persons.

(B) The policy and criteria used to rank preapplications/applications for infrastructure and all other community facility-type projects will include the following which are not necessarily in rank order:

(1) The extent to which the project will have the potential to promote the growth of a rural community by improving the quality of life for local or regional residents.

(2) The extent to which the project will affect the health and safety of local or regional area residents.

(3) The extent to which the project will improve or enhance cultural activities, public service, education, or transportation.

(4) The extent to which the project will affect business productivity and efficiency.

(5) The extent to which the project will enhance commercial business activity.

(6) The extent to which the project will address a severe loss or lack of water quality or quantity.

(7) The extent to which the project will correct a waste collection or disposal problem.

(8) The extent to which the project will bring a community into compliance with Federal or State water or waste water standards.

(9) The extent to which the project will consolidate water and waste systems and utilize management efficiencies in the new system.

(2) *Review and evaluate area plans.* Each area plan submitted for a local or regional area will be reviewed and evaluated by the panel. After an area plan has been reviewed and evaluated in accordance with established policy and criteria:

(i) The panel will accept any area plan that meets established criteria unless the plan is incompatible with any other area plan for that area that has been accepted by the panel; or

(ii) The panel will return any area plan that is technically or economically inadequate, not feasible, is unlikely to be successful, or is not compatible with other panel-accepted area plans for that area. When an area plan is returned, the panel will include an explanation of the reasons for the return and suggest alternative proposals.

(iii) The State coordinator will notify the State Director, in writing, of the panel's decision on each area plan reviewed.

(3) *Review and rank preapplications/applications.* The panel will review, rank, and transmit a ranked list of preapplications/applications according to the schedule prepared in accordance with paragraph (a) of this section, and the following:

(i) *Review preapplications/applications.* The panel will review each preapplication/application for assistance to determine if the project to be carried out is compatible with the area plan in which the project described in the preapplication/application is proposed, and either:

(A) Accept any preapplication/application determined to be compatible with such area plan; or

(B) Return to the State Director any preapplication/application determined not to be compatible with such area plan. The panel will notify the applicant when preapplication/applications are returned to the State Director.

(ii) *Rank preapplications/applications.* The panel will rank only those preapplications/applications that have been accepted in accordance with paragraph (b)(3)(i)(A) of this section. The panel will consider the sources of assistance and related activities in the State identified by the designated agency. Applications will be ranked in accordance with the written policy and criteria established in accordance with paragraph (b)(1)(ii) of this section and the following:

(A) Priority ranking for projects addressing health emergencies. In addition to the criteria established in paragraph (b)(1)(ii) of this section, preapplications/applications for projects designed to address a health emergency declared so by the appropriate Federal or State agency, will be given priority by the panel.

(B) Priority based on need. If two or more preapplications/applications ranked in accordance with this subpart are determined to have comparable strengths in their feasibility and potential for growth, the panel will give priority to the applications for projects with the greatest need.

(C) If additional ranking criteria for use by a panel are required in any designated rural development program regulation, the panel will give consideration to the criteria when ranking preapplications/applications submitted under that program.

(iii) *Transmit list of ranked preapplications/applications.* After the preapplications/applications have been ranked, the panel will submit a list of all preapplications/applications received to the State coordinator. The list will clearly indicate each preapplication/application accepted for funding and will list preapplications/applications in the order established for funding according to priority ranking by the panel. The list will not include a preapplication/application that is to be returned to the applicant in accordance with paragraph (b)(3)(i)(B) of this section. The State coordinator will send a copy of the list to the State Director for further processing of the preapplication/application in accordance with § 1940.965 of this subpart. Once the panel has ranked and submitted the list to FmHA and the State Director has selected a preapplication/application for funding, the preapplication/application selected will not be replaced with a preapplication/application received at a later date that may have a higher ranking.

(4) *Public availability of list.* If requested, the State coordinator will make the list of ranked preapplications/applications available to the public and will include a brief explanation and justification of why the project preapplications/applications received their priority ranking.

(c) *Membership.* (1) *Voting members.* The panel will be composed of not more than 16 voting members who are representatives of rural areas. The 16 voting members will include the following:

(i) One of whom is the Governor of the State or the person designated by the Governor to serve on the panel, on behalf of the Governor, for that year;

(ii) One of whom is the director of the State agency responsible for economic and community development or the person designated by the director to serve on the panel, on behalf of the director, for that year;

(iii) One of whom is appointed by a statewide association of banking organizations;

(iv) One of whom is appointed by a statewide association of investor-owned utilities;

(v) One of whom is appointed by a statewide association of rural telephone cooperatives;

(vi) One of whom is appointed by a statewide association of noncooperative telephone companies;

(vii) One of whom is appointed by a statewide association of rural electric cooperatives;

(viii) One of whom is appointed by a statewide association of health care organizations;

(ix) One of whom is appointed by a statewide association of existing local government-based planning and development organizations;

(x) One of whom is appointed by the Governor of the State from either a statewide rural development organization or a statewide association of publicly-owned electric utilities, neither of which is described in any of paragraphs (c)(1)(iii) through (ix);

(xi) One of whom is appointed by a statewide association of counties;

(xii) One of whom is appointed by a statewide association of towns and townships, or by a statewide association of municipal leagues, as determined by the Governor;

(xiii) One of whom is appointed by a statewide association of rural water districts;

(xiv) The State director of the Federal small business development center or, if there is no small business development center in place with respect to the State, the director of the State office of the Small Business Administration;

(xv) The State representative of the Economic Development Administration of the Department of Commerce; and

(xvi) One of whom is appointed by the State Director from among the officers and employees of FmHA.

(2) *Nonvoting members.* The panel will have not more than four nonvoting members who will serve in an advisory capacity and who are representatives of rural areas. The four nonvoting members will be appointed by the Governor and include:

(i) One from names submitted by the dean or the equivalent official of each school or college of business, from colleges and universities in the State;

(ii) One from names submitted by the dean or the equivalent official of each school or college of engineering, from colleges and universities in the State;

(iii) One from names submitted by the dean or the equivalent official, of each school or college of agriculture, from colleges and universities in the State; and

(iv) The director of the State agency responsible for extension services in the State.

(3) *Qualifications of panel members appointed by the Governor.* Each individual appointed to the panel by the Governor will be specially qualified to serve on the panel by virtue of the individual's technical expertise in business and community development.

(4) *Notification of selection.* Each statewide organization that selects an individual to represent the organization on the panel must notify the Governor of the selection.

(5) *Appointment of members representative of statewide organization in certain cases.*

(i) If there is no statewide association or organization of the entities described in paragraph (c)(1) of this section, the Governor of the State will appoint an individual to fill the position or positions, as the case may be, from among nominations submitted by local groups of such entities.

(ii) If a State has more than one of any of the statewide associations or organizations of the entities described in paragraph (c)(1) of this section, the Governor will select one of the like organizations to name a member to serve during no more than one established time period. Thereafter, the Governor will rotate selection from among the remaining like organizations to name a member.

(d) *Failure to appoint panel members.* The failure of the Governor, a Federal agency, or an association or organization described in paragraph (c) of this section, to appoint a member to the panel as required under this subpart, shall not prevent a State from being determined an eligible State.

(e) *Panel vacancies.* A vacancy on the panel will be filled in the manner in which the original appointment was made. Vacancies should be filled prior to the third panel meeting held after the vacany occurred. The State coordinator will notify the State Director, in writing, when the vacancy is filled or if the vacancy will not be filled.

(f) *Chairperson and vice chairperson.* The panel will select two members of the panel who are not officers or employees of the United States to serve as the chairperson and vice chairperson of the panel. The term shall be for 1 year.

(g) *Compensation to panel members.* (1) *Federal members.* Except as provided in § 1940.960 of this subpart, each member of the panel who is an officer or employee of the Federal Government may not receive any compensation or benefits by reason of service on the panel, in addition to that which is received for performance of such officer or employee's regular employment.

(2) *NonFederal members.* Each nonfederal member may be compensated by the State and/or from grant funds established in § 1940.968 of this subpart.

(h) *Rules governing panel meetings.* (1) *Quorum.* A majority of voting members of the panel will constitute a quorum for the purpose of conducting business of the panel.

(2) *Frequency of meetings.* The panel will meet not less frequently than quarterly. Frequency of meetings should be often enough to assure that applications are reviewed and ranked for funding in a timely manner.

(3) *First meeting.* The State coordinator will schedule the first panel meeting and will notify all panel members of the location, date, and time at least seven days prior to the meeting. Subsequent meetings will be scheduled by vote of the panel.

(4) *Records of meetings.* The panel will keep records of the minutes of the meetings, deliberations, and evaluations of the panel in sufficient detail to enable the panel to provide interested agencies or persons the reasons for its actions.

(i) *Federal Advisory Committee Act.* The Federal Advisory Committee Act shall not apply to any State rural economic development review panel.

(j) *Liability of members.* The members of a State rural economic development review panel shall not be liable to any person with respect to any determination made by the panel.

§ 1940.957 State coordinator.

The Governor will appoint an officer or employee of State government as State coordinator in order for a State to become and remain an eligible State under this subpart. The State coordinator will have the following duties and responsibilities:

(a) Manage, operate, and carry out the instructions of the panel;

(b) Serve as liaison between the panel and the Federal and State agencies involved in rural development;

(c) Coordinate the efforts of interested rural residents with the panel and ensure that all rural residents in the State are informed about the manner in which assistance under designated rural development programs is provided to the State pursuant to this subpart, and if requested, provide information to State residents; and

(d) Coordinate panel activities with FmHA.

§ 1940.958 Designated agency.

The Governor will appoint a State agency to provide the panel and the State coordinator with support for the daily operation of the panel. In addition to providing support, the designated agency is responsible for identifying:

(a) Alternative sources of financial assistance for project preapplications/applications reviewed and ranked by the panel, and

(b) Related activities within the State.

§ 1940.959 Area plan.

Each area plan submitted to the panel for review in accordance with § 1940.956 of this subpart shall identify the geographic boundaries of the area and shall include the following information:

(a) An overall development plan for the area with goals, including business development and infrastructure development goals, and time lines based on a realistic assessment of the area, including, but not limited to, the following:

(1) The number and types of businesses in the area that are growing or declining;

(2) A list of the types of businesses that the area could potentially support;

(3) The outstanding need for water and waste disposal and other public services or facilities in the area;

(4) The realistic possibilities for industrial recruitment in the area;

(5) The potential for development of tourism in the area;

(6) The potential to generate employment in the area through creation of small businesses and the expansion of existing businesses; and

(7) The potential to produce value-added agricultural products in the area.

(b) An inventory and assessment of the human resources of the area, including, but not limited to, the following:

(1) A current list of organizations in the area and their special interests;

(2) The current level of participation of area residents in rural development activities and the level of participation required for successful implementation of the plan;

(3) The availability of general and specialized job training in the area and the extent to which the training needs of the area are not being met;

(4) A list of area residents with special skills which could be useful in developing and implementing the plan; and

(5) An analysis of the human needs of the area, the resources in the area available to meet those needs, and the manner in which the plan, if implemented, would increase the resources available to meet those needs.

(c) The current degree of intergovernmental cooperation in the area and the degree of such cooperation needed for the successful implementation of the plan.

(d) The ability and willingness of governments and citizens in the area to become involved in developing and implementing the plan.

(e) A description of how the governments in the area apply budget and fiscal control processes to the plan. This process is directed toward costs associated with carrying out the planned development. When plans are developed, the financial condition of all areas covered under the plan should be fully recognized and planned development should realistically reflect the area's immediate and long-range financial capabilities.

(f) The extent to which public services and facilities need to be improved to achieve the economic development and quality of life goals of the plan. At a minimum, the following items will be considered:

(1) Law enforcement;

(2) Fire protection;

(3) Water, sewer, and solid waste management;

(4) Education;

(5) Health care;

(6) Transportation;

(7) Housing;

(8) Communications; and

(9) The availability of and capability to generate electric power.

(g) Existing area or regional plans are acceptable provided the plan includes statements that indicate the degree to which the plan has met or is meeting all the requirements in paragraphs (a) through (f) of this section.

§ 1940.960 Federal employee panel members.

(a) The State Director will appoint one FmHA employee to serve as a voting member of the panel established in § 1940.956(c)(1) of this subpart.

(b) The Administrator may appoint, temporarily and for specific purposes, personnel from any department or agency of the Federal Government as nonvoting panel members, with the consent of the head of such department or agency, to provide official information to the panel. The member(s) appointed shall have expertise to perform a duty described in § 1940.956(b) of this subpart that is not available among panel members.

(c) Federal panel members will be paid per diem or otherwise reimbursed by the Federal Government for expenses incurred each day the employee is engaged in the actual performance of a duty of the panel. Reimbursement will be in accordance with Federal travel regulations.

§ 1940.961 Allocation of appropriated funds.

(a) *Initial allocations.* (1) Each FY, from sums appropriated for direct loans, loan guarantees, or grants for any designated rural development program, funds will be allocated to designated States in accordance with FmHA Instruction subpart L of part 1940, Exhibit A, Attachment 4, of this chapter (available in any FmHA State or District Office).

(2) Each FY, and normally within 30 days after the date FmHA receives an appropriation of designated rural development program funds, the Governor of each designated State will be notified of the amounts allocated to the State under each designated program for such FY. The Governor will also be notified of the total amounts appropriated for the FY for each designated rural development program.

(3) The State Director will fund projects from a designated State's allocation of funds, according to appropriate program regulations giving great weight to the order in which the preapplications/applications for projects are ranked and listed by the panel in accordance with § 1940.956(b)(3) of this subpart.

(b) *Reserve.* A percentage of the National Office reserve established in subpart L of part 1940 of this chapter will be used to establish a reserve for designated States that is separate and apart from that of nondesignated States. The percent reserved will be based upon the same criteria used in subpart L of part 1940 of this chapter to allocate program funds.

(c) *Pooling.* (1) On July 15 of each FY, and from time to time thereafter during the FY, as determined appropriate, unobligated funds will be pooled from among the designated States. Pooled funds will be made a part of the reserve established for designated States and will revert to National Office control.

(2) Funds pooled from designated States can be requested by designated States, pursuant to subsection (d) of this section. The designated States' pool; however, will not be available to nondesignated States until September 1 of each year.

(d) *Request for funds.* (1) Designated States may request designated States' reserve funds, and funds for other designated rural development programs controlled by the National Office, as shown in FmHA Instruction subpart L of part 1940, Exhibit A, Attachment 4, of this chapter, in accordance with applicable program regulations.

(2) Designated States may request funds from the nondesignated reserve account when:

(i) All allocated and reserve funds to designated states have been used, or

(ii) Sufficient funds do not remain in any designated State allocation and in the designated States' reserve account to fund a project.

§ 1940.962 Authority to transfer direct loan amounts.

(a) *Transfer of funds.* If the amounts allocated to a designated State for direct Water and Waste Disposal or Community Facility loans for a FY are not sufficient to provide the full amount requested for a project in accordance with this subpart, the State Director may transfer part or all of the funds allocated to the State, from one program to another, subject to paragraphs (b) and (c) of this section.

(b) *Limitation on amounts transferred.*

(1) Amounts transferred within a designated State. The amount of direct loan funds transferred from a program under this section shall not exceed the amount left unobligated after obligating the full amount of assistance requested for each project that ranked higher in priority on the panel's list.

(2) Amounts transferred on a National basis. The amount of direct loan funds transferred in a FY, among the designated States, from a program under this subpart (after accounting for any offsetting transfers into such program) shall not exceed $9 million, or an amount otherwise authorized by law.

(c) *National Office concurrence.* The State Director may transfer direct loan funds authorized in this section, after requesting and receiving concurrence from the National Office. If permitted by law, the National Office will concur in requests on a first-come-first-served basis.

§ 1940.963 Authority to transfer guaranteed loan amounts.

(a) *Transfer of funds.* If the amounts allocated to a designated State for guaranteed Water and Waste Disposal, Community Facility, or Business and Industry loans for a FY are not sufficient to provide the full amount requested for a project in accordance with this subpart, the State Director may transfer part or all of the funds allocated to the State, from one program to another, subject to paragraphs (b) and (c) of this section.

(b) *Limitation on amounts transferred.* The amount of guaranteed loan funds transferred from a program under this section shall not exceed the amount left unobligated after obligating the full amount of assistance requested for each project that ranked higher in priority on the panel's list.

(c) *National Office concurrence.* The State Director may transfer guaranteed loan funds authorized in this section, after requesting and receiving concurrence from the National Office. If permitted by law, the National Office will concur in requests on a first-come-first-served basis.

§ 1940.964 [Reserved]

§ 1940.965 Processing project preapplication/applications.

Except for the project review and ranking process established in this subpart, all requests for funds from designated rural development programs will be processed, closed, and serviced according to applicable FmHA regulations, available in any FmHA office.

(a) *Preapplications/applications.* All preapplications/applications on hand that have not been selected for further processing will be submitted initially to the panel for review and ranking. Preapplications/applications on hand that had been selected for further processing prior to the time a State was selected to participate in this program may be funded by FmHA without review by the panel. Preapplications/applications selected for further processing by FmHA will not exceed the State's previous year's funding level. The State Director will provide the State coordinator a list of preapplications/applications that are in process and will be considered for funding without review by the panel. This list will be provided at the same time preapplications/applications are initially submitted to the State coordinator in accordance with paragraph (d) of this section.

(b) *FmHA review.* Preapplications/applications will be reviewed in sufficient detail to determine eligibility and, if applicable, determine if the applicant is able to obtain credit from other sources at reasonable rates and terms. Normally, within 45 days after receiving a complete preapplication/application, FmHA will notify the applicant of the eligibility determination. A copy of all notifications will be sent to the State coordinator.

(c) *Applicant notification.* The notification to eligible applicants will contain the following statements:

Your application has been submitted to the State coordinator for review and ranking by the State rural economic development review panel. If you have questions regarding this review process, you should contact the State coordinator. The address and telephone number are: (insert).

You will be notified at a later date of the decision reached by the panel and whether or not you can proceed with the proposed project.

You are advised against incurring obligations which cannot be fulfilled without FmHA funds.

These statements should be included in notifications to applicants with preapplications/applications on hand that had not been selected for further processing prior to the time a State was selected to participate in this program.

(d) *Information to State coordinator.* FmHA will forward a copy of the preapplication/application and other information received from the applicant to the State coordinator according to a schedule prepared in accordance with § 1940.956(a) of this subpart. The State coordinator will be advised that no further action will be taken on preapplications/applications until they have been received and ranked by the panel, and a priority funding list has been received from the State. Applications forwarded to the State coordinator will be reviewed and ranked for funding in accordance with § 1940.956 of this subpart.

(e) *The FmHA review of priority funding list.* FmHA will review the list of ranked applications received from the State coordinator and determine if projects meet the requirements of the designated rural development program under which the applicant seeks assistance. Any project that does not meet program regulations will be removed from the list. Applicants will be notified of the decision reached by the panel and whether or not the applicant should proceed with the project. FmHA will provide a copy of all notifications to the State coordinator. The decisions of the panel are not appealable.

(f) *Obligation of funds.* FmHA will provide funds for projects whose application remains on the list, subject to available funds. Consideration will be given to the order in which the applications were ranked and prioritized by the panel. If FmHA proposes to provide assistance to any project without providing assistance to all projects ranked higher in priority by the panel than the project to be funded, 10 days prior to requesting an obligation of funds, the State Director will submit a report stating reasons for funding such lower ranked project to the following:

(1) *Panel.*

(2) *National Office.* The National Office will submit a copy of the notification to:

(i) Committee on Agriculture of the House of Representatives, Washington, DC.

(ii) Committee on Agriculture, Nutrition, and Forestry of the Senate, Washington, DC.

§§ 1940.966–1940.967 [Reserved]

§ 1940.968 Rural Economic Development Review Panel Grant (Panel Grant).

(a) *General.* Panel Grants awarded will be made from amounts

appropriated for grants under any provision of Section 306(a) of the CONACT (7 U.S.C 1926(a)), not to exceed $100,000 annually to each eligible State. This section outlines FmHA's policies and authorizations and sets forth procedures for making grants to designated States for administrative costs associated with a State rural economic development review panel.

(b) *Objective.* The objective of the Panel Grant program is to make grant funds available annually to each designated State to use for administrative costs associated with the State rural economic development review panels meeting requirements of § 1940.956 of this subpart.

(c) *Authorities, delegations, and redelegations.* The State Director is responsible for implementing the authorities in this section and to issue State supplements redelegating these authorities to appropriate FmHA employees. Grant approval authorities are contained in subpart A of part 1901 of this chapter.

(d) *Joint funds.* FmHA grant funds may be used jointly with funds furnished by the grantee or grants from other sources.

(e) *Eligibility.* A State designated by the Under Secretary to participate in this program is eligible to receive not more than $100,000 annually under this section. A State must become and remain an eligible State in order to receive funds under this section.

(f) *Purpose.* Panel Grant funds may be used to pay for reasonable administrative costs associated with the panel, including, but not limited to, the following:

(1) Travel and lodging expenses;

(2) Salaries for State coordinator and support staff;

(3) Reasonable fees and charges for professional services necessary for establishing or organizing the panel. Services must be provided by individuals licensed in accordance with appropriate State accreditation associations;

(4) Office supplies, and

(5) Other costs that may be necessary for panel operations.

(g) *Limitations.* Grant funds will not be used to:

(1) Pay costs incurred prior to the effective date of the grant authorized under this subpart;

(2) Recruit preapplications/applications for any designated rural development loan or grant program or any loan or grant program;

(3) Duplicate activities associated with normal execution of any panel member's occupation;

(4) Fund political activities;

(5) Pay costs associated with preparing area development plans;

(6) Pay for capital assets; purchase real estate, equipment or vehicles; rent, improve, or renovate office space; or repair and maintain State or privately owned property;

(7) Pay salaries to panel members; or

(8) Pay per diem or otherwise reimburse panel members unless distance traveled exceed 50 miles.

(h) *Other considerations.* (1) *Equal opportunity requirements.* Grants made under this subpart are subject to Title VI of the Civil Rights Act of 1964 as outlined in subpart E of part 1901 of this chapter.

(2) *Environmental requirements.* The policies and regulations contained in subpart G of part 1940 of this chapter apply to grants made under this subpart.

(3) *Management assistance.* Grantees will be provided management assistance as necessary to assure that grant funds are used for eligible purposes for the successful operation of the panel. Grants made under this subpart will be administered under and are subject to the U.S. Department of Agriculture regulations, 7 CFR, parts 3016 and 3017, as appropriate.

(4) *Drug-free work place.* The State must provide for a drug-free workplace in accordance with the requirements of FmHA Instruction 1940–M (available in any FmHA office). Just prior to grant approval, the State must prepare and sign Form AD–1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—For Grantees Other Than Individuals."

(i) *Application processing.* (1) The State Director shall assist the State in application assembly and processing. Processing requirements should be discussed during an application conference.

(2) After the Governor has been notified that the State has been designated to participate in this program and the State has met all eligibility requirements of this subpart, the State may file an original and one copy of SF 424.1 with the State Director. The following information will be included with the application:

(i) State's financial or in-kind resources, if applicable, that will maximize the use of Panel Grant funds;

(ii) Proposed budget. The financial budget that is part of SF 424.1 may be used, if sufficient, for all panel income and expense categories;

(iii) Estimated breakdown of costs, including costs to be funded by the grantee or from other sources;

(iv) Financial management system in place or proposed. The system will account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State must be sufficient to permit preparation of reports required by Federal regulations and permit the tracing of funds to a level of expenditures adequate to establish that grant funds are used solely for authorized purposes;

(v) Method to evaluate panel activities and determine if objectives are met;

(vi) Proposed Scope-of-Work detailing activities associated with the panel and time frames for completion of each task, and

(vii) Other information that may be needed by FmHA to make a grant award determination.

(3) The applicable provisions of § 1942.5 of subpart A of part 1942 of this chapter relating to preparation of loan dockets will be followed in preparing grant dockets. The docket will include at least the following:

(i) Form FmHA 400–4, "Assurance Agreement;"

(ii) Scope-of-work prepared by the applicant and approved by FmHA;

(iii) Form FmHA 1940–1, "Request for Obligation of Funds," with Exhibit A, and

(iv) Certification regarding a drug-free workplace in accordance with FmHA Instruction 1940–M (available in any FmHA office).

(j) *Grant approval, obligation of funds, and grant closing.*

(1) The State Director will review the application and other documents to determine whether the proposal complies with this subpart.

(2) Exhibit A (available from any FmHA State Office), shall be attached to and become a permanent part of Form FmHA 1940–A and the following paragraphs will appear in the comment section of that form:

> The Grantee understands the requirements for receipt of funds under the Panel Grant program. The Grantee assures and certifies that it is in compliance with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those set out in FmHA 7 CFR, part 1940, subpart T, and 7 CFR, parts 3016 and 3017, including revisions through _____ (date of grant approval). The Grantee further agrees to use grant funds for the purposes outlined in the Scope-of-Work approved by FmHA. Exhibit A is incorporated as a part hereof.

(3) Grants will be approved and obligated in accordance with the applicable parts of § 1942.5(d) of subpart A of part 1942 of this chapter.

(4) An executed copy of the Scope-of-Work will be sent to the State

coordinator on the obligation date, along with a copy of Form FmHA 1940–1 and the required exhibit. FmHA will retain the original of Form FmHA 1940–1 and the exhibit.

(5) Grants will be closed in accordance with the applicable parts of Subpart A of Part 1942 of this chapter, including § 1942.7. The grant is considered closed on the obligation date.

(6) A copy of Form FmHA 1940–1, with the required exhibit, and the Scope-of-Work will be submitted to the National Office when funds are obligated.

(7) If the grant is not approved, the State coordinator will be notified in writing of the reason(s) for rejection. The notification will state that a review of the decision by FmHA may be requested by the State under subpart B of part 1900 of this chapter.

(k) *Fund disbursement.* Grant funds will be disbursed on a reimbursement basis. Requests for funds should not exceed one advance every 30 days. The financial management system of the State shall provide for effective control and accountability of all funds, property, and assets.

(1) SF 270, "Request for Advance or Reimbursement," will be completed by the State coordinator and submitted to the State Director not more frequently than monthly.

(2) Upon receipt of a properly completed SF 270, the State Director will request funds through the Automated Discrepancy Processing System. Ordinarily, payment will be made within 30 days after receipt of a properly prepared request for reimbursement.

(3) States are encouraged to use minority banks (a bank which is owned by at least 50 percent minority group members) for the deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprises, Department of Commerce, Washington, DC 20230.

(l) *Title.* Title to supplies acquired under this grant will vest, upon acquisition, in the State. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the grant awarded, and if the supplies are not needed for any other federally sponsored programs, the State shall compensate FmHA for its share.

(m) *Costs.* Costs incurred under this grant program are subject to cost principles established in Office of Management and Budget Circular A–87.

(n) *Budget changes.* Rebudgeting within the approval direct cost categories to meet unanticipated requirements which do not exceed 10 percent of the current total approved budget shall be permitted. The State shall obtain prior approval from the State Director for any revisions which result in the need for additional funding.

(o) *Programmatic changes.* The State shall obtain prior written approval from the State Director for any change to the scope or objectives for which the grant was approved or for contracting out or otherwise obtaining services of a third party to perform activities which are central to the purposes of the grant. Failure to obtain prior approval of changes to the scope can result in suspension or termination of grant funds.

(p) *Financial reporting.* SF 269, "Financial Status Report," and a Project Performance Report are required on a quarterly basis. The reports will be submitted to the State Director not later than 30 days after the end of each quarter. A final SF 269 and Project Performance Report shall be due 90 days after the expiration or termination of grant support. The final report may serve as the last quarterly report. The State coordinator will constantly monitor performance to ensure that time schedules are met, projected work by time periods is accomplished, and other performance objectives are achieved. Program outlays and income will be reported on an accrual basis. Project Performance Reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Reasons why established objectives were not met;

(3) Problems, delays, or adverse conditions which will affect the ability to meet the objectives of the grant during established time periods. This disclosure must include a statement of the action taken or planned to resolve the situation; and

(4) Objectives and timetable established for the next reporting period.

(q) *Audit requirements.* Audit reports will be prepared and submitted in accordance with § 1942.17(q)(4) of subpart A of part 1942 of this chapter. The audit requirements only apply to the year(s) in which grant funds are received. Audits must be prepared in accordance with generally accepted government auditing standards using publication, "Standards for Audits of Governmental Organizations, Programs, Activities and Functions."

(r) *Grant cancellation.* Grants which have been approved and funds obligated may be cancelled by the grant approval official in accordance with § 1942.12 of subpart A of part 1942 of this chapter. The State Director will notify the State coordinator that the grant has been cancelled.

(s) *Grant servicing.* Grants will be serviced in accordance with subparts E and O of part 1951 of this chapter.

(t) *Subsequent grants.* Subsequent grants will be processed in accordance with the requirements of this subpart for each additional time period a State is designated to participate in this program.

§ 1940.969 Forms, exhibits, and subparts.

Forms, exhibits, and subparts of this chapter (all available in any FmHA office) referenced in this subpart, are for use in establishing a State economic development review panel and for administering the Panel Grant program associated with the panel.

§ 1940.970 [Reserved]

§ 1940.971 Delegation of authority.

The authority authorized to the State Director in this subpart may be redelegated.

§§ 1940.972–1940.999 [Reserved]

§ 1940.1000 OMB control number.

The collection of information requirements contained in this regulation has been approved by the Office of Management and Budget and assigned OMB control number 0575–0145. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 48 hours per response with an average of 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

PART 1951—SERVICING AND COLLECTIONS

6. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

Subpart E—Servicing of Community and Insured Business Programs Loans and Grants

7. Section 1951.201 is revised to read as follows:

§ 1951.201 Purpose.

This subpart prescribes the Farmers Home Administration's (FmHA) policies, authorizations, and procedures for servicing Water and Waste Disposal System loans and grants; Community Facility loans; Industrial Development grants; loans for grazing and other shift-in-land-use projects; Association Recreation loans; Association Irrigation and Drainage loans; Watershed loans and advances; Resource Conservation and Development loans; Insured Business loans; Economic Opportunity Cooperative loans; loans to Indian Tribes and Tribal Corporations; Rural Renewal loans; Energy Impacted Area Development Assistance Program grants; Water and Waste Disposal Technical Assistance and Training grants; Emergency Community Water Assistance grants; and System for Delivery of Certain Rural Development Programs panel grant. Loans sold without insurance by FmHA to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

Dated: February 7, 1992.

Michael M. F. Liu,

Acting Under Secretary for Small Community and Rural Development.

[FR Doc. 92-7706 Filed 4-3-92; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

8 CFR Parts 3, 103, 242, and 292

[AG Order No. 1579-92]

Executive Office for Immigration Review; Rules of Procedures

AGENCY: Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the rules of administrative procedure that are followed in all matters before Immigration Judges, the regulations governing deportation proceedings, and the rules governing disciplinary proceedings against attorneys and representatives. These regulatory changes are promulgated to implement the following sections of the Immigration Act of 1990, Public Law 101-649 (IMMACT): Section 504 regarding custody and bond determinations for aggravated felons; section 545 concerning notice requirements, eligibility for certain relief from deportation, and dissiplimary proceedings for frivolous behavior of attorneys and representatives; and, section 701 concerning the confidentiality of information regarding a battered spouse or child in proceedings. Additional changes to the rules of procedure have been made to reflect the experience and observations of practice under the current rules, and to further assist in the fair and proper resolution of issues before the Immigration Judges. To achieve these ends, certain portions of existing rules have been amended or deleted, and several new provisions have been added. Many of the rules have been renumbered as a result of these changes.

The rules of procedure are interrelated. Unless specifically noted to the contrary, each rule of procedure should be construed harmoniously with existing regulations under this chapter.

DATES: This interim rule is effective April 6, 1992, except for §§ 3.15 and 3.26 which will be effective June 13, 1992. Written comments must be received on or before May 6, 1992.

ADDRESSES: Please submit written comments to: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, (703) 305-0470.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, (703) 305-0470.

SUPPLEMENTARY INFORMATION: These changes to the current rules of practice before the Immigration Judges, and to regulations governing deportation proceedings and disciplinary proceedings against attorneys and representatives, have been promulgated as a result of IMMACT. Title V of IMMACT mandates changes in deportation and exclusion proceedings with regard to criminal aliens. Regulations concerning custody and bond determinations have been amended to implement section 504 with regard to aggravated felons. Pursuant to section 545, regulations have been added to provide for sanctions against attorneys or accredited representatives who engage in frivolous behavior in immigration proceedings and to require notice to aliens in deportation proceedings in accordance with specified procedures. Regulations protecting the confidentiality of information concerning an abused spouse or child in proceedings before an Immigration Judge have been included.

In addition, many other changes have been made to promote increased efficiency in operations, while responding to observations regarding more effective methods of case handling. The regulatory changes will improve and expedite the hearing process before Immigration Judges, while retaining all due process protections necessary for a fair hearing. Several of the changes reflect the need to ensure an adequate and correct address for the alien in proceedings to satisfy due process notice requirements, and allow for *in absentia* hearings when an alien who is provided with notice fails to appear.

Other changes have been added to reflect many current practices before Immigration Judges, including the use of minute orders and the requirement of specific language for the certification of foreign language translations. The amendments require that notice of any change of venue must be given to all parties. Further amendments to the rules clarify procedures for fee collection by the Service, and allow for documents to be filed with a fee receipt or application for fee waiver. Clarifications were made to existing rules to alleviate any confusion over when the decision of the Immigration Judge becomes final. Finally, minor language changes are included to correct or clarify common terminology used in the rules.

What follows is a section by section analysis of the proposed regulatory amendments:

8 CFR 3.1(d)(1-a) *Summary Dismissal of Appeals.* This rule provides for the summary dismissal of appeals for certain specified reasons. It also provides that attorneys or representatives who file such appeals may be found to have engaged in frivolous behavior within the scope of 8 CFR 292.

8 CFR 3.12 *Scope of Rules.* This rule expands the scope of the rules of procedure to include hearings regarding disciplinary proceedings under section 292 of this title.

8 CFR 3.14 *Jurisdiction and Commencement of Proceedings.* This section requires the Service to notify the respondent/applicant of the Office of the Immigration Judge in which the charging document has been filed.

8 CFR 3.15 *Contents of Order to Show Cause and Notification of Change of Address.* This new section clarifies and expands the information to be contained

in the Order to Show Cause. Inclusion of this information will add to a more efficient and accurate administrative handling of the case. The identifying information will be provided by the Service to assist in the administrative processing of cases by the Office of the Immigration Judge. This section is not intended to provide any substantive or procedural rights to the respondent in the event that information is omitted or incorrect.

8 CFR 3.16 (New Section Number). *Representation.* Section 3.15 is redesignated as § 3.16.

8 CFR 3.17 (New Section Number). *Appearances.* Section 3.16 is redesignated as § 3.17. It is also amended to require counsel for the respondent/applicant to serve a separate Notice of Appearance on the Service for any matter before the Immigration Judge, regardless of whether counsel has previously filed a Notice of Appearance with the Service for appearances before the Service.

8 CFR 3.18 (New Section Number). *Scheduling of cases.* Section 3.17 is redesignated as § 3.18.

8 CFR 3.19 (New Section Number). *Custody/Bond.* Section 3.18 is redesignated as § 3.19. It is also amended to implement section 504 of IMMACT, which prohibits release of aggravated felons on bond or other conditions. An exception is made for aliens lawfully admitted to the United States who are in deportation proceedings if certain stringent criteria are met. In addition, the regulation limits an alien to one bond redetermination unless changed circumstances occurring after the prior bond redetermination would warrant a new determination. Finally certain technical amendments have been introduced. The term "alien" has been changed to "respondent/applicant". Section 3.19(c)(2) amends the phrase "Immigration Judge Office" to "Office of the Immigration Judge". These minor language amendments reflect the correct terminology used in proceedings before the Immigration Judge. Section 3.19(g) establishes a procedure requiring the Service immediately to notify the Office of the Immigration Judge of any change in custody location, release of a detained alien, or subsequent taking of an alien into Service custody. Prompt notification of custody changes will allow the Office of the Immigration Judge to schedule cases more accurately and avoid unnecessary cancellation of hearings when an alien has been moved or released from custody.

8 CFR 3.20 (New Section Number). *Change of Venue.* Section 3.19 is redesignated as § 3.20. This section states that venue shall lie where the charging document is filed by the Service. A motion for a change of venue can be made by either party. Before a change of venue may be granted, certain address information must be provided to ensure proper notice of future hearings to the respondent/applicant.

8 CFR 3.21 (New Section Number). *Pre-hearing Conferences and Statement.* Section 3.20 is redesignated as § 3.21. This section states that the Immigration Judge can require certain information of either or both parties to assist in the presentation and ultimate decision of a case. It will provide the Immigration Judge with a specific mechanism to clarify issues, allow for more accurate time scheduling of cases, and generally simplify and organize the proceeding. In addition the rule allows the Immigration Judge to require evidentiary objections in writing prior to the hearing. Failure to respond will allow the Immigration Judge to admit the evidence described in the prehearing statement as unopposed. The ultimate decision as to admissibility, however, remains with the Immigration Judge.

8 CFR 3.22 (New Section Number). *Interpreters.* Section 3.21 is redesignated as § 3.22.

8 CFR 3.23 (New Section Number). *Motions.* Section 3.22 is redesignated as § 3.23.

8 CFR 3.24 (New Section Number). *Waiver of Fees in Immigration Judge Proceedings.* Section 3.23 is redesignated as § 3.24.

8 CFR 3.25 (New Section Number). *Waiver of presence of respondent/applicant.* Section 3.24 is redesignated as § 3.25.

8 CFR 3.26 (New Section Number). *In absentia hearings.* This new section expands the language of former § 3.24 dealing with *in absentia* hearings. It requires the Immigration Judge to proceed *in absentia* when an alien fails to appear at a hearing, provided that proper notice has been properly given to the alien. The address in the Record of Proceeding will have been provided by the alien. The Immigration Judge shall rely on that information to decide whether due notice has been given to the alien.

8 CFR 3.27 (New Section Number). *Public access to hearing.* Section 3.25 is redesignated as § 3.27. Hearings held pursuant to section 216(c)(4) of the Act will be closed to the public unless the abused alien spouse or abused child agrees to allow the hearing and the record of proceeding to be open. In the case of an abused child, the Immigration Judge may decide whether to allow the hearing and the Record of Proceeding to be open.

8 CFR 3.28 (New Section Number). *Recording equipment.* Section 3.26 is redesignated as § 3.28.

8 CFR 3.29 (New Section Number). *Continuances.* Section 3.27 is redesignated as § 3.29.

8 CFR 3.30 (New Section Number). *Additional charges in deportation hearings.* Section 3.28 is redesignated as § 3.30.

8 CFR 3.31 (New Section Number). *Filing documents and applications.* Section 3.29 is redesignated as § 3.31. The rule changes the standardized filing procedures for documents and applications with the Office of the Immigration Judge. All documents and applications requiring a fee must be accompanied either by a receipt from the Service, which will be collecting all fees relating to Immigration Judge proceedings, or an application for a fee waiver pursuant to § 3.24. It is anticipated that these changes will clarify the filing requirements and improve the efficient processing of applications before the Immigration Judge.

8 CFR 3.32 (New Section Number). *Service and size of documents.* Section 3.30 is redesignated as § 3.32. This rule requires parties to provide each other with copies of all documents to be presented to the Immigration Judge.

8 CFR 3.33 (New Section Number). *Translation of documents.* Section 3.31 is redesignated as § 3.33. This rule codifies standard language for the certification of translation that must accompany any foreign language document offered by a party in a proceeding.

8 CFR 3.34 (New Section Number). *Testimony.* Section 3.32 is redesignated as § 3.34.

8 CFR 3.35 (New Section Number). *Depositions.* Section 3.33 is redesignated as § 3.35.

8 CFR 3.36 (New Section Number). *Record of Proceeding.* Section 3.34 is redesignated as § 3.36.

8 CFR 3.37 (New Section Number). *Decisions.* Section 3.35 is redesignated as § 3.37. The rule makes minor changes to the practice regarding decisions rendered in Immigration Judge proceedings. The phrase "conclusion of the hearing" was omitted to allow for those occasions when a decision is rendered orally by the Immigration Judge at a time subsequent to the hearing. A new requirement that a memorandum of oral decision or "minute order" be prepared and served in every case has been added to reflect a widely used and popular practice.

8 CFR 3.38 (New Section Number). *Appeals.* Section 3.38 is redesignated as § 3.38.

8 CFR 3.39 (New Section Number). *Finality of decision.* Section 3.37 is redesignated as § 3.39. This minor language change clarifies when a decision of the Immigration Judge becomes final. This will prevent any confusion in fixing a time certain for a decision to be final.

8 CFR 3.40 (New Section Number). *Local Operating Procedures.* Section 3.38 is redesignated as § 3.40.

8 CFR 103.3 *Denials, Appeals and Precedent Decisions.* Paragraph (a)(1)(v) is added, providing that appeals shall be summarily dismissed if a party fails to specify the reasons for the appeal or if the appeal is frivolous, as defined in 8 CFR 292.3.

8 CFR 103.7 *Fees.* Paragraph (a) is revised to provide for the Service to accept any fee relating to an EOIR proceeding and provide a receipt for such payment. EOIR will accept the fee receipt as evidence that the required fee has been paid. It is anticipated that this procedure will improve overall efficiency in the processing of cases before EOIR.

8 CFR 242.2 *Authority of the Immigration Judge; Appeals.* Paragraph (d) has been modified by removing many of the references to procedures before the Immigration Judge. These references have been placed in part 3 of title 8 of the Code of Federal Regulations to improve clarity and to better organize the regulations dealing with procedures before the Immigration Judge into one section.

A new paragraph (h) has also been added: *Notification to Executive Office for Immigration Review of change in custody status.* This paragraph is to be read in conjunction with § 3.19(g) to require the Service affirmatively to advise EOIR of any change of location, or subsequent release, of a detained alien. As stated under § 3.19, this procedure will eliminate problems in scheduling hearings for aliens no longer in detention, and will provide for a more efficient and productive use of the Immigration Judge's schedule.

8 CFR 242.8 *Immigration Judges.* Paragraph (a) has been amended by adding a reference to the new statutory section relating to 242B proceedings.

8 CFR 292.3 *Discipline of Attorneys and Representatives.* This section is revised by changing the title from "Suspension and Disbarment" to the title listed above. The rule provides for sanctions against attorneys or representative who engage in frivolous behavior in immigration proceedings. The rule defines frivolous behavior, and sets forth the procedure for investigating, instituting charges, and holding a hearing on a complaint of frivolous behavior. Sanctions may include suspension, disbarment, or other appropriate action. In the case of Service attorneys, complaints shall be directed to the Office of Professional Responsibility of the Department of Justice.

These regulations implement many of the provisions of IMMACT regarding substantive and procedural changes in proceedings before Immigration Judges. Attention has focused on those sections of IMMACT that were effective upon enactment or shortly thereafter. In addition, an effort was made both to improve and to expedite the hearing process before Immigration Judges. The changes reflect the experience gained under the current rules, and seek to accommodate and implement the practices that have proven most effective in providing a fair hearing.

Implementation of this rule as an interim rule, with provision for post promulgation comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d). The reasons and the necessity for immediate implementation of this interim rule are as follows: The statutory requirements upon which this rule is based became effective upon, or shortly after, enactment of IMMACT on November 29, 1990.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of EO 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of Executive Order 12612.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration Organization and functions (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, surety bonds.

8 CFR Part 242

Administrative practice and procedure, Aliens.

8 CFR Part 292

Administrative practice and procedure, Immigration, Lawyers, Reporting and recordkeeping requirements.

Accordingly, title 8, chapter I of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; Sec. 2, Reorganization Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., P. 1002.

2. Section 3.1 is amended by revising paragraph (d)(1-a) to read as follows:

§ 3.1 General Authorities.

* * * * *

(d) * * *

(1-a) *Summary dismissal of appeals.* (i) *Standards.* The Board may summarily dismiss any appeal or portion of any appeal in any case in which:

(A) the party concerned fails to specify the reasons for the appeal on Form EOIR–26 or Form EOIR 29 (Notices of Appeal) or other document filed therewith;

(B) the only reason for the appeal specified by the party concerned involves a finding of fact or a conclusion of law that was conceded by that party at a prior proceeding;

(C) the appeal is from an order that granted the party concerned the relief that had been requested;

(D) the Board is satisfied, from a review of the record, that the appeal lacks an arguable basis in law or fact, or that the appeal is filed for an improper purpose, such as to cause unnecessary delay;

(E) the party concerned indicates on Form EOIR–26 or FORM EOIR–29 that he or she will file a brief or statement in support of the appeal and, thereafter, does not file such brief or statement, or reasonably explain his or her failure to do so, within the time set for filing; or

(F) the appeal fails to meet essential statutory or regulatory requirements or is expressly excluded by statute or regulation.

(ii) *Disciplinary consequences.* The filing by an attorney or representative accredited under 8 CFR 292.2(d) of an appeal which is summarily dismissed under paragraph (d)(1-a)(i) of this section may constitute frivolous behavior under 8 CFR 292.3(a)(15). Summary dismissal of an appeal under paragraph (d)(1-a)(i) of this section does not limit the other grounds and procedures for disciplinary action against attorneys or representatives.

* * * * *

3. Section 3.12 is revised to read as follows:

§ 3.12 Scope of rules.

These rules are promulgated to assist in the expeditious, fair, and proper resolution of matters coming before Immigration Judges. Except where specifically stated, these rules apply to all matters before Immigration Judges, including, but not limited to, deportation, exclusion, bond, rescission, departure control proceedings, and disciplinary proceedings under 8 CFR 292.3.

4. Section 3.13 is revised to read as follows:

§ 3.13 Definitions.

As used in this subpart:

Administrative Control means custodial responsibility for the Record of Proceeding as specified in 8 CFR 3.11.

Charging document means the written instrument which initiates a proceeding before an Immigration Judge including an Order to Show Cause, a Notice to Applicant for Admission Detained for Hearing before Immigration Judge, and a Notice of Intention to Rescind and Request for hearing by Alien.

Filing means the actual receipt of a document by the appropriate Office of the Immigration Judge.

Service means physically presenting or mailing a document to the appropriate party or parties.

5. Section 3.14 is revised to read as follows:

§ 3.14 Jurisdiction and commencement of proceedings.

(a) Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Office of the Immigration Judge by the Service, except for bond proceedings as provided in 8 CFR 3.19 and 8 CFR 242.2(b). When a charging document is filed, a certificate of service that indicates the Office of the Immigration Judge in which the charging document is filed must be served upon the opposing party pursuant to 8 CFR 3.32.

(b) When an Immigration Judge has jurisdiction over an underlying proceeding, sole jurisdiction over applications for asylum shall lie with the Immigration Judge.

§§ 3.25 through 3.38 [Redesignated as §§ 3.27 through 3.40]

6. Section 3.25 through 3.38 are redesignated as sections 3.27 through 3.40 respectively.

§§ 3.15 through 3.24 [Redesignated as §§ 3.16 through 3.25]

7. Sections 3.15 through 3.24 are redesignated as sections 3.16 through 3.25 respectively.

8. A new § 3.15 is added to read as follows:

§ 3.15 Contents of the order to show cause and notification of change of address.

(a) In the Order to Show Cause, the Service shall provide the following administrative information to the Executive Office for Immigration Review. Omission of any of these items shall not provide the alien with any substantive or procedural rights:

(1) The alien's names and any known aliases;

(2) The alien's address;

(3) The alien's registration number, with any lead alien registration number with which the alien is associated;

(4) The alien's alleged nationality and citizenship;

(5) The language that the alien understands;

(b) The Order to Show Cause must also include the following information:

(1) The nature of the proceedings against the alien;

(2) The legal authority under which the proceedings are conducted;

(3) The acts or conduct alleged to be in violation of law;

(4) The charges against the alien and the statutory provisions alleged to have been violated;

(5) Notice that the alien may be represented, at no cost to the government, by counsel or other representative authorized to appear pursuant to 8 CFR 292.1;

(6) The address of the Office of the Immigration Judge where the Service will file the Order to Show Cause; and

(7) A statement that the alien must advise the Office of the Immigration Judge having administrative control over the Record of Proceeding of his or her current address and telephone number and a statement that failure to provide such information may result in an *in absentia* hearing in accordance with § 3.26.

(c) *Address and telephone number.*

(1) If the alien's address is not provided on the Order to Show Cause, or if the address on the Order is incorrect, the alien must provide to the Office of the the Immigration Judge where the Order to Show Cause has been filed, within five days of service of the Order, a written notice of an address and telephone number at which the alien can be contacted, on Form EOIR–33, change of address form.

(2) Within five working days of any change of address, the alien must provide written notice of the change of address on Form EOIR–33, change of address form to the Office of the Immigration Judge where the Order to Show Cause has been filed, or if venue has been changed, to the Office of the Immigration Judge to which venue has been changed.

(3) The information required by paragraphs (c)(1) and (c)(2) of this section shall include, where applicable, the alien's name, alien registration number, the old address and telephone number, the new address and telephone number, and the effective date of change.

9. Redesignated § 3.17 is revised to read as follows:

§ 3.17 Appearances.

(a) In any proceeding before an Immigration Judge in which the respondent/applicant is represented, the attorney or representative shall file a Notice of Appearance on the appropriate EOIR form with the Office of the Immigration Judge and shall serve a copy of the Notice of Appearance on the Service as required by 8 CFR 3.32(a). Such Notice of Appearance must be filed and served even if a separate Notice of Appearance(s) has previously been filed with the Service for appearance(s) before the Service.

(b) Withdrawal or substitution of an attorney or representative may be permitted by an Immigration Judge during proceedings only upon oral or written motion submitted without fee.

10. Redesignated § 3.19 is revised to read as follows:

§ 3.19 Custody/bond.

(a) Custody and bond determinations made by the service pursuant to part 242 of this chapter may be reviewed by an Immigration Judge pursuant to part 242 of this chapter.

(b) Application for an initial bond redetermination by a respondent, or his or her attorney or representative, may be made orally, in writing, or, at the discretion of the Immigration Judge, by telephone.

(c) Applications for the exercise of authority to review bond determinations shall be made to one of the following offices, in the designated order:

(1) If the respondent is detained, to the Office of the Immigration Judge having jurisdiction over the place of detention;

(2) To the Office of the Immigration Judge having administrative control over the case; or

(3) To the Office of the Chief Immigration Judge for designation of an appropriate Office of the Immigration Judge.

(d) Consideration by the Immigration Judge of an application or request of a respondent regarding custody or bond under this section shall be separate and apart from, and shall form no part of, any deportation hearing or proceeding. The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or the Service.

(e) After an initial bond redetermination, a request for a subsequent bond redetermination shall be made in writing and shall be considered only upon a showing that the alien's circumstances have changed materially since the prior bond redetermination.

(f) The determination of an Immigration Judge with respect to custody status or bond redetermination shall be entered on the appropriate form at the time such decision is made and the parties shall be informed orally or in writing of the reasons for the decision. An appeal from the determination by an Immigration Judge may be taken to the Board of Immigration Appeals pursuant to section 3.38.

(g) While any proceeding is pending before the Executive Office for Immigration Review, the Service shall immediately advise the Office of the Immigration Judge having administrative control over the Record of Proceeding of a change in the respondent/applicant's custody location or of release from Service custody, or subsequent taking into Service custody, of a respondent/applicant. This notification shall be in writing and shall state the effective date of the change in custody location or status, and the respondent/applicant's current fixed street address, including zip code.

(h) An alien in deportation proceedings who has been convicted of an aggravated felony shall not be released from custody on bond or other conditions. Nevertheless, an alien who has been lawfully admitted to the United States and who establishes to the satisfaction of the Immigration Judge that the alien is not a threat to the community and that the alien is likely to appear at any scheduled hearings, may be released on bond or other conditions designed to guarantee such appearance.

11. Redesignated § 3.20 is revised to read as follows:

§ 3.20 Change of venue.

(a) Venue shall lie at the Office of the Immigration Judge where the charging document is filed pursuant to 8 CFR 3.14.

(b) The Immigration Judge, for good cause, may change venue only upon motion by one of the parties, after the charging document has been filed with the Office of the Immigration Judge. The Immigration Judge may grant a change of venue only after the other party has been given notice and an opportunity to respond to the motion to change venue.

(c) No change of venue shall be granted without identification of a fixed street address, including city, state and ZIP code, where the respondent/applicant may be reached for further hearing notification.

12. Redesignated § 3.21 is revised to read as follows:

§ 3.21 Pre-hearing conferences and statement.

(a) Pre-hearing conferences may be scheduled at the discretion of the Immigration Judge. The conference may be held to narrow issues, to obtain stipulations between the parties, to exchange information voluntarily, and otherwise to simplify and organize the proceeding.

(b) The Immigration Judge may order any party to file a pre-hearing statement of position that may include, but is not limited to: A statement of facts to which both parties have stipulated, together with a statement that the parties have communicated in good faith to stipulate to the fullest extent possible; a list of proposed witnesses and what they will establish; a list of exhibits, copies of exhibits to be introduced, and a statement of the reason for their introduction; the estimated time required to present the case; and, a statement of unresolved issues involved in the proceedings.

(c) If submission of a pre-hearing statement is ordered under paragraph (b) of this section, an Immigration Judge also may require both parties, in writing prior to the hearing, to make any evidentiary objections regarding matters contained in the pre-hearing statement. If objections in writing are required but not received by the date for receipt set by the Immigration Judge, admission of all evidence described in the pre-hearing statement shall be deemed unopposed.

13. A new § 3.26 is added to read as follows:

§ 3.26 In absentia hearings.

In any proceeding before an Immigration Judge in which the respondent/applicant fails to appear, the Immigration Judge shall conduct an *in absentia* hearing if the Immigration Judge is satisfied that notice of the time and place of the proceeding was provided to the respondent/applicant on the record at a prior hearing or by written notice to the respondent/applicant or to respondent/applicant's counsel of record, if any, at the most recent address contained in the Record of Proceeding.

14. Redesignated § 3.27 is amended by adding paragraph (c), to read as follows:

§ 3.27 Public access to hearing.

* * * * *

(c) In a proceeding before an Immigration Judge pursuant to section 216(c)(4) of the Act concerning an abused alien spouse or an abused child, the Record of Proceeding and the hearing shall be closed to the public, unless the abused alien spouse or abused child agrees that the hearing and the Record of Proceeding shall be open to the public. In the case of an abused child, the Immigration Judge may decide if the hearing and Record of Proceeding shall be open.

15. Redesignated § 3.31 is revised to read as follows:

§ 3.31 Filing documents and applications.

(a) All documents and applications that are to be considered in a proceeding before an Immigration Judge must be filed with the Office of the Immigration Judge having administrative control over the Record of Proceeding.

(b) All documents or applications requiring the payment of a fee must be accompanied by a fee receipt from the Service or by an application for a waiver of fees pursuant to 8 CFR 3.24. Any fee relating to Immigration Judge proceedings shall be paid to, and accepted by, any Service office authorized to accept fees for other purposes pursuant to 8 CFR 103.7(a).

(c) The Immigration Judge may set and extend time limits for the filing of applications and related documents and responses thereto, if any. If an application or document is not filed within the time set by the Immigration Judge, the opportunity to file that application or document shall be deemed waived.

§ 3.32 [Amended]

16. Paragraph (a) of redesignated § 3.32 is amended by:

a. At the beginning of the first sentence, remove the word "A" and add the following in its place, "Except in *in absentia* hearings, a".

b. Revising, in the third sentence, the phrase "service to" to read "service on".

17. Redesignated § 3.33 is revised to read as follows:

§ 3.33 Translation of documents.

Any foreign language document offered by a party in a proceeding shall be accompanied by an English language translation and a certification signed by the translator that must be printed legibly or typed and specifically must include the following statement:

I, (name of translator), certify that I am competent to translate this document, and that the translation is true and accurate, to the best of my abilities.

18. Redesignated § 3.37 is revised to read as follows:

§ 3.37 Decisions.

(a) A decision of the Immigration Judge may be rendered orally or in writing. If the decision is oral, it shall be stated by the Immigration Judge in the presence of the parties and a memorandum summarizing the oral decision shall be served on the parties. If the decision is in writing, it shall be served on the parties by first class mail to the most recent address contained in the Record of Proceeding or by personal service.

19. Redesignated § 3.39 is amended by removing the period at the end thereof and adding the phrase "whichever occurs first."

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS: AVAILABILITY OF SERVICE RECORDS

20. The authority citation for part 103 is revised to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356; 47 FR 14874, 15557, 3 CFR, 1982 Comp., p 166; 8 CFR part 2.

21. Section 103.3 is amended by adding paragraph (a)(1)(v), to read as follows:

§ 103.3 Denials, appeals, and precedent decisions.

(a) * * *

(1) * * *

(v) *Summary dismissal.* An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. The filing by an attorney or representative accredited under 8 CFR 292.2(d) of an appeal which is summarily dismissed under this section may constitute frivolous behavior as defined in 8 CFR 292.3(a)(15). Summary dismissal of an appeal under § 103.3(a)(1)(v) in no way limits the other grounds and procedures for disciplinary action against attorneys or representatives provided in 8 CFR 292.2 or in any other statute or regulation.

* * * * *

22. Section 103.7 is amended by revising the first three sentences of paragraph (a) to read as follows:

§ 103.7 Fees.

(a) *Remittances.* Fees prescribed within the framework of 31 U.S.C. 483a shall be submitted with any formal application or petition prescribed in this chapter and shall be in the amount prescribed by law or regulation. Any fee relating to any Executive Office for Immigration Review proceeding shall be paid to, and accepted by, any Service office authorized to accept fees. Payment of any fee under this section does not constitute filing of the document with the Office of the Immigration Judge. The Service shall return to the payer at the time of payment both the receipt for any fee paid and any documents submitted with the fee. * * *

* * * * *

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

23. The authority citation for part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362; 8 CFR Part 2.

24. Section 242.2 is amended by:

a. Revising paragraph (d); and

b. Adding a new paragraph (h), to read as follows:

§ 242.2 Apprehension, custody and detention.

* * * * *

(d) *Authority of the Immigration Judge; Appeals.* After an initial determination pursuant to paragraph (c) of this section, and at any time before a deportation order becomes administratively final, upon application by the respondent for release from custody or for amelioration of the conditions under which he or she may be released, an Immigration Judge may exercise the authority contained in section 242 of the Act to continue to detain a respondent in custody, or to release a respondent from custody, and to determine whether a respondent shall be released under bond, and the amount of the bond, if any. Application for the exercise of such authority shall be made pursuant to § 3.19 of this chapter. In connection with such application, the Immigration Judge shall advise the respondent of his or her right to representation by counsel of his or her choice at no expense to the government. He or she shall also be advised of the availability of free legal services programs qualified under part 292a of this chapter and organizations recognized pursuant to § 292.2 of this chapter, located in the district where his or her application is heard. The Immigration Judge shall ascertain that the respondent has received a list of such programs and a copy of Form I–618 Written Notice of Appeal Right. Moreover, if the respondent has been released from custody, an application for amelioration of conditions must be made within seven (7) days after the date of such release. Thereafter, application by a released respondent for modification of the terms of release may be made only to the District Director. Upon rendering a decision on an application under this section, the Immigration Judge (or the district director if he renders the decision) shall advise the alien of his or her appeal rights under this section. The alien and the Service may appeal to the Board of Immigration Appeals from any determination of the Immigration Judge as to custody status or bond, pursuant to § 3.38 of this chapter. If the determination is appealed, a written memorandum shall be prepared by the Immigration Judge giving reasons for the decision. After a deportation order becomes administratively final, or if recourse to the Immigration Judge is no longer available because the seven day period established by this paragraph has expired, the respondent may appeal directly to the Board from a determination by the District Director, Acting District Director, Deputy District Director, Assistant District Director for Investigations, or Officer in charge of an office enumerated in § 242.1(a). Such an appeal shall be perfected by filing a notice of appeal with the District Director within 10 days after the date when written notification of the determination is served upon the respondent and the Service, except that no appeal shall be allowed when the Service notifies the alien that it is ready to execute the order of deportation and takes him into custody for that purpose. Upon the filing of a notice of appeal from a District Director's determination, the District Director shall immediately transmit to the Board all records and information pertaining to that determination. The filing of an appeal from a determination of an Immigration Judge or a District Director shall not operate to delay compliance, during the pendency of the appeal, with the custody directive from which the appeal

is taken, or to stay the administrative proceedings or deportation.

* * * * *

(h) *Notification to Executive Office for Immigration Review of change in custody status.* The Service shall notify the Office of the Immigration Judge having administrative control over the Record of Proceeding of any change in custody location or of release from, or subsequent taking into, Service custody of a respondent/applicant pursuant to 8 CFR 3.19(g).

25. Paragraph (a) of § 242.8 is amended by adding, in the first sentence, the phrase "and 242B" after the phrase "section 242(b)".

PART 292—REPRESENTATION AND APPEARANCES

26. The authority citation for part 292 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1252b, 1362.

27. Section 292.3 is amended by:

a. Revising the section heading;

b. Revising paragraph (a) introductory text;

c. Adding paragraph (a)(15); and

d. Revising paragraph (b), to read as follows:

§ 292.3 Discipline of attorneys and representatives.

(a) *Grounds.* The Immigration Judge, Board, or Attorney General may suspend or bar from further practice before the Executive Office for Immigration Review or the Service, or may take other appropriate disciplinary action against, an attorney or representative if it is found that it is in the public interest to do so. Appropriate disciplinary sanctions may include disbarment, suspension, reprimand or censure, or such other sanction as deemed appropriate. The suspension, disbarment, or imposition of other appropriate disciplinary action against an attorney or representative who is within one or more of the following categories shall be deemed to be in the public interest, for the purposes of this Part, but the enumeration of the following categories does not constitute the exclusive grounds for discipline in the public interest:

* * * * *

(15) Who has engaged in frivolous behavior in a proceeding before an Immigration Judge, the Board of Immigration Appeals, or any other administrative appellate body under title II of the Immigration and Nationality Act.

(i) An attorney or representative engages in frivolous behavior when he or she knows or reasonably should have known that his or her actions lack an arguable basis in law or in fact, or are taken for an improper purpose, such as to cause unnecessary delay. Actions that, if taken improperly, may be subject to discipline include, but are not limited to, the making of an argument on any factual or legal question, the submission of an application for discretionary relief, the filing of a motion, or the filing of an appeal. The signature of an attorney or an accredited representative on any filing, application, motion, appeal, brief, or other paper constitutes certification by the signer that the signer has read the filing, application, motion, appeal, brief, or other paper, and that, to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, the document is well grounded in fact, is warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law, and is not interposed for any improper purpose;

(ii) The imposition of disciplinary action for frivolous behavior under this section in no way limits the Board's authority summarily to dismissal an appeal pursuant to 8 CFR 3.1(d)(1–a).

(b) *Procedure.* (1) *Non-Service attorneys and accredited representatives.*

(i) *Investigation of charges.* Complaints regarding the conduct of attorneys and representatives practicing before the Service or the Executive Office for Immigration Review pursuant to 8 CFR 292.1 shall be investigated by the Service.

(ii) *Service and filing of charges.* If an investigation establishes, to the satisfaction of the Service, that disciplinary proceedings should be instituted, the General Counsel of the Service shall cause a copy of written charges to be served upon the attorney/representative either by personal service or by registered mail. The General Counsel shall also file the written charges with the Office of the Chief Immigration Judge immediately after service of the charges upon the attorney/representative.

(iii) *Service and filing of answer.* The attorney/representative shall answer the charges, in writing, within thirty (30) days after the date of service, and shall file the answer with the Office of the Chief Immigration Judge. Failure of the attorney/representative to answer the written charges in a timely manner shall constitute an admission that the facts and legal statements in the written charges are correct. The attorney/representative shall also serve a copy of the answer on the General Counsel. Proof of service on the opposing party must be included with all documents filed.

(iv) *Hearing.* The Chief Immigration Judge shall designate an Immigration Judge to hold a hearing and render a decision in the matter. The designated Immigration Judge shall notify the attorney/representative and the Service as to the time and the place of the hearing. At the hearing, the attorney/representative may be represented by an attorney at no expense to the Government and the Service shall be represented by an attorney. At the hearing, the attorney/representative shall have a reasonable opportunity to examine and object to the evidence presented by the Service, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the Service. The Service shall bear the burden of proving the grounds for disciplinary action by clear, convincing, and unequivocal evidence. The record of the hearing shall conform to the requirements of 8 CFR 242.15.

(v) *Decision.* The Immigration Judge shall consider the record and render a decision in the case, including that the evidence presented does not sufficiently prove grounds for disciplinary action or that disciplinary action is justified. If the Immigration Judge finds that the evidence presented does sufficiently prove grounds for disciplinary action, the appropriate sanction shall be ordered. If the Immigration Judge orders a suspension, the Immigration Judge shall set an amount of time for the suspension.

(vi) *Appeal.* Either party may appeal the decision of the Immigration Judge to the Board. The appeal must be filed within ten (10) days from the date of the decision, if oral, or thirteen (13) days from the date of mailing of the decision, if written. The appeal must be filed with the office of the Immigration Judge holding the hearing. If an appeal is not filed in a timely manner, or if the appeal is waived, the decision of the Immigration Judge is final. If a case is appealed in a timely manner, the Board shall consider the record and render a decision. Receipt of briefs and the hearing of oral argument shall be at the discretion of the Board. The Board's decision shall be final except when a case is certified to the Attorney General pursuant to 8 CFR 3.1(h).

(2) *Service attorneys.* Complaints regarding the frivolous behavior of Service attorneys within the scope of § 292.3(a)(15) shall be directed to, and investigated by, the Office of Professional Responsibility of the Department of Justice. If disciplinary action is warranted, it shall be

administered pursuant to the attorney disciplinary procedures of the Department of Justice.

Dated: March 21, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92-7537 Filed 4-3-92; 8:45 am]

BILLING CODE 1531-26-GF

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 1, 11, 45, 61, 65, 71, 75, 91, 93, 101, 103, 105, 121, 127, 135, 137, 139, and 171

[Docket No. 24456; Amendment Nos. 1-38, 11-35, 45-21, 61-92, 65-36, 71-14, 75-5, 91-227, 93-64, 101-5, 103-4, 105-10, 121-226, 127-44, 135-41, 137-14, 139-18, and 171-16]

RIN 2120-AB95

Airspace Reclassification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects an error in two amendment numbers of a final rule on airspace reclassification that was published on December 17, 1991 (56 FR 65638). This action corrects that error.

EFFECTIVE DATE: September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. William M. Mosley, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9251.

SUPPLEMENTARY INFORMATION: The document was published December 17, 1991, (56 FR 65638). In the heading, in the agency docket information, change Amendment "135-40", to read "135-41", and "93-63" to read "93-64". As corrected, the agency docket information reads as set forth above.

Denise Castaldo,

Manager, Program Management Staff.

[FR Doc. 92-7829 Filed 4-3-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-AGL-6]

Alteration of Federal Airways; IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Federal Airways V-69, V-116, and V-262 located in Illinois. This action is the result of an airspace utilization improvement study and the implementation of standard terminal arrival routes in the Chicago area. These alterations will enhance the flow of arrival traffic in the Chicago O'Hare terminal environment, improve controller workload, and reduce aeronautical chart clutter.

EFFECTIVE DATE: 0901 u.t.c., June 25, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

History

On October 2, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of V-69, V-116, and V-262 located in Illinois (56 FR 49855). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. The VOR Federal airways listed in this document are published in § 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters V-69, V-116, and V-262 located in Illinois. This action alters segments of the airways in the vicinity of Chicago, IL, to implement standard terminal arrival routes serving the Chicago O'Hare terminal environment.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V-69

From Shreveport, LA, via INT Shreveport 084° and El Dorado, AR, 218° radials; El Dorado; Pine Bluff, AR; INT Pine Bluff 038° and Walnut Ridge, AR, 187° radials; Walnut Ridge; Farmington, MO; Troy, IL; Capital, IL; Pontiac, IL; Joliet, IL.

* * * * *

V-116

From INT Kansas City, MO, 076° and Nepoleon, MO, 005° radials via Macon, MO; Quincy, IL; Peoria, IL; Pontiac, IL; Joliet, IL. From INT Chicago O'Hare, IL, 092° and Chicago Heights, IL, 013° radials; INT Chicago O'Hare 092° and Keeler, MI, 256° radials; Keeler; Jackson, MI; INT Jackson 089° and Salem, MI, 251° radials; Salem; Windsor, ON, Canada; INT Windsor 092° and Erie, PA, 281° radials; Erie; Bradford, PA; Stonyfork, PA; INT Stonyfork 098° and Wilkes-Barre, PA, 310° radials; Wilkes-Barre; INT Wilkes-Barre 084° and Sparta, NJ, 300° radials; to Sparta. The airspace within Canada is excluded.

* * * * *

V-262

From Peoria, IL; Bradford, IL; to INT Bradford 085° and Joliet, IL, 204° radials; Joliet.

* * * * *